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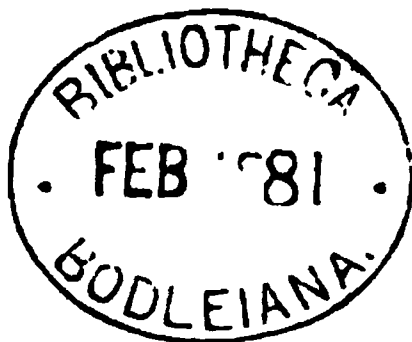
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PREFACE TO THE FOURTH EDITION.

THE important alterations in the law which have been made since the Third Edition of this Work was published have rendered it possible materially to modify and reduce the size of the Work. The Editor trusts that he has succeeded in doing this, without having omitted anything which would add to its value.

Parishes, while still existing for ecclesiastical purposes, are now merged in districts and unions for sanitary, highway, educational and poor relief purposes; but as such districts and unions are comprised of parishes, the original title of the book has been retained. The Editor ventures to hope that the work will be found useful, not only by those who are practically engaged in the administration of the parochial affairs of the country, whether civil or ecclesiastical, but also by the professional reader. The Editor desires to acknowledge valuable assistance which has been rendered to him by his friends, Mr. W. P. Eversley, of the South-Eastern Circuit, and Mr. H. O. Wakeman, of the Oxford Circuit.

W. H. M.

INNER TEMPLE, *Jan.* 1, 1881.

EXTRACT FROM THE
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THERE are several hundred volumes already in the hands of the public upon the various subjects comprehended in that extensive department of our Jurisprudence, which is designated by the title to this Work. The fact of so many members of the learned profession having, from time to time, devoted their attention to the subject, and the enormous amount of labour which has been devoted to it, sufficiently demonstrate its importance.

In the midst of this abundance and variety, it is a little singular that a compendium of the whole has not been offered to the patronage of the profession. Burn's Justice, however excellent in itself, is at once too comprehensive and too exclusive for the purpose. It contains much which does not belong, and omits a great deal which is essential, to a complete treatise upon the subject, being, as its name imports, more adapted for the county magistrate than for the parish officer.

The complex and multifarious duties and interests, civil and ecclesiastical, of this (not inaptly called) little republic—the rights and responsibilities of its officers—the mode of their election—the extent and duration, with the means of redress for the abuse, of their authority—the sources of parish

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PARISH LAW:

CIVIL, ECCLESIASTICAL, &c.

CHAPTER I.

PARISHES.

- SECTION I. *Origin of Parishes.*
II. *Boundaries of Parishes.*
III. *Formation of New Parishes.*
IV. *Parishioners.*
-

SECTION I.—ORIGIN OF PARISHES.

History.] As the ecclesiastical division of the kingdom was not commenced till a long time after the introduction of Christianity, and as those who were most active and most immediately interested in its establishment were also the historians of the times, it seems a little singular that the information respecting the infancy and extension of religious institutions in this country should be so scanty and uncertain. It is agreed among ecclesiastical writers, that dioceses existed before parishes, and that it was only when the number of converts within the district over which the bishop exercised his functions became too large for him, even with the aid of his presbyters, to minister to their spiritual wants, that parishes were instituted. Besides, the erection of churches, in different parts of the country as religion spread among the people, would afford an additional reason, as a matter of convenience, for the division into smaller portions of the districts over which the bishop still maintained a general control and superintendence. Thus in process of time the presbyters or priests, who were little more than the curates or messengers to the higher dignitaries, became settled in the towns and villages distant from the cathedral churches in which the bishops themselves officiated, and the limits of their spiri-

tual superintendence being co-extensive with the habitations of the persons who resorted to their churches, those districts were eventually marked out and determined, which were afterwards called and known by the distinctive appellation of parishes; though in the more early times, it is probable that *diocesis* and *parochia* were terms applied to either division indiscriminately. *Com. Dig.* "*Parish*;" 3 *Burn, Ecc. L.* 74.

Provinces, Dioceses, &c.] The ecclesiastical division of the kingdom is primarily into two provinces, those of Canterbury and York. A province is the circuit of an archbishop's jurisdiction. Each province contains divers dioceses, or sees of suffragan bishops; they are styled suffragans in respect of their relation to the archbishop of their province; but formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These, in our ecclesiastical law, are called suffragan bishops. They should not be confounded with the coadjutors of a bishop, who are appointed in case of the bishop's infirmity, to superintend his jurisdiction and temporalities, neither of which was within the interference of the former. 1 *Gibbs. Cod.* 1st ed. 155.

Before the Orders in Council founded on 6 & 7 Will. 4, c. 77, the province of Canterbury included twenty-one dioceses; seventeen of ancient foundation, viz., Rochester, his principal chaplain, London, his dean, Winchester, his chancellor, Norwich, Lincoln, Ely, Chichester, Salisbury, Exeter, Bath and Wells, Worcester, Lichfield and Coventry, Hereford, Llandaff, St. David's, Bangor, and St. Asaph, with four founded by Henry the Eighth, and erected from the ruins of dissolved monasteries, viz., Gloucester, Bristol, Peterborough, and Oxford. The province of York had four only, though anciently more: viz., Chester, Durham, Carlisle, and the Isle of Man, which was annexed to the province of York by King Henry the Eighth. By the Orders in Council above mentioned, the sees of Gloucester and Bristol were united, the archdeaconry of Coventry was transferred from the diocese of Lichfield to that of Worcester, and the bishopric of Ripon was founded in the province of York. By the 10 & 11 Vict. c. 108, the diocese of Manchester was created; and the extent of the dioceses of St. Asaph, Bangor and Chester defined. By 38 & 39 Vict. c. 34, the diocese of St. Albans was founded, and the boundaries of the dioceses of London, Winchester, and Rochester altered. By 39 &

40 Vict. c. 54, the bishopric of Truro was founded out of a part of the diocese of Exeter. By 41 & 42 Vict. c. 68, provision was made for the foundation of four new bishoprics as soon as the requisite funds for their endowment should have been provided. The proposed new bishoprics were Liverpool, Newcastle, Wakefield, and Southwell. The bishopric of Liverpool has already been founded under that Act. Every diocese is divided into archdeaconries, and each archdeaconry into rural deaneries, which are the circuit of the archdeacon's and rural dean's jurisdiction.

Parish.] A parish for ecclesiastical purposes is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein.

Extent.] It seems to be tolerably certain, that the boundaries of parishes were originally ascertained by those of a manor or manors : since it very seldom happens that a manor extends itself over more parishes than one, though there are often many manors in one parish. The lords, as Christianity spread itself, began to build churches upon their own demesnes or wastes, to accommodate their tenants in one or two adjoining lordships ; and, in order to have divine service regularly performed therein, obliged all their tenants to appropriate their tithes to the maintenance of the one officiating minister, instead of leaving them at liberty to distribute them among the clergy of the diocese in general ; and this tract of land, the tithes whereof were so appropriated, formed a distinct parish.

Extra-parochial Places.] Besides those portions of the kingdom which thus became included in parishes, there were other lands which were never united to any parish, and were, therefore, extra-parochial. 1 *Blackst. Com.* 114. Some of these places have, by Act of Parliament, been formed into parishes, or parochial districts ; others continue to the present day extra-parochial.

Union of Parishes.] For the purposes of local government several parishes are sometimes joined together to form one district ; and, on the other hand, a large parish is frequently divided into a number of districts. By the Public Health Act, 1875, England is divided for the purposes of that Act into urban sanitary districts and rural sanitary districts ; and these districts are respectively made subject to the jurisdiction of the local authority. And by the Poor Law Amendment Act, 1834, parishes may be united for the relief of the poor. The ecclesiastical divisions of parishes and the municipal

boundaries are not altered by the formation of such districts. See 39 & 40 Vict. c. 61.

SECTION II.—BOUNDARIES OF PARISHES.

Boundaries Traditional.] The boundaries of parishes in most instances depend upon ancient and immemorial custom, having been originally established according to the particular circumstances of the times or districts. *Still*. 243. They were settled long after the foundation of churches, and were afterwards much varied, and in many cases abridged and narrowed, as new churches were built. *Lousley v. Hayward*, 1 Y. & J. 586.

Where a parish extends up to a tidal river, but there is nothing to show whether it does or does not extend beyond the line of ordinary or medium high-water mark, land between such high-water and low-water mark is not to be assumed to be within the parish. *Trustees of Duke of Bridgewater's Estates v. Surveyors of Bootle-cum-Linacre*, L. R. 2 Q. B. 4 ; 36 L. J. Q. B. 41.

Perambulations.] For a long period, a sufficient inducement to define the boundaries of parishes accurately did not present itself ; but when it became part of the law to require the attendance of the people upon the services of religion at the parish church, and numerous civil duties were conferred upon them as parishioners, it then was felt to be of consequence to have the limits of each parish ascertained and settled. For this purpose, perambulations were made, and are, in many places, still continued. These perambulations, though of evident utility, were accompanied with great abuses. At length the irregularities and excesses committed on these occasions attracted the reprehension of the sovereign, for we find that processions, in the manner in which they had been performed, were forbidden by injunctions from Queen Elizabeth, though it was at the same time required, that for the retaining of the perambulations of the circuits of parishes, the people should, once in the year, at the time accustomed, with the curate and the substantial men of the parish, walk about the parishes as they were accustomed, and at their return to the church make their common prayers.

It is said in *Goodday v. Michell*, Cro. Eliz. 441 ; *Owen*, 72, that it is not to be doubted that parishioners may well justify the going over any man's lands in their perambulations, according to their

usage or custom, and may abate all nuisances in their way. See *F. N. B.* 185; *Vin. Ab.* "*Perambulation.*" But an entry into a particular house cannot be justified, or a custom to that effect supported, unless the house stands on the boundary line, and it is necessary to enter it for the purposes of the perambulation. *Taylor v. Devey*, 7 A. & E. 412.

Disputes as to Bounds.] When from the neglect to perambulate, or from other causes, the bounds of parishes have become confused and difficult to determine, the proper mode to have them ascertained is by an action at law.

Wastes near Parish.] By 17 Geo. 2, c. 37, it is enacted, that where there shall be any dispute in what parish or place improved wastes and drained and improved marsh lands lie, and ought to be rated, the occupiers of such lands or houses built thereon, tithes arising therefrom, mines therein and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish or place as lies nearest to such lands; and if, on application to the officers of such parish or place to have the same assessed, any dispute shall arise, the justices of the peace at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundary of any parish or place, otherwise than for the purpose of rating such lands to the relief of the poor and other parochial rates. Sects. 1, 2. And by the 2 & 3 Edw. 6, c. 13, s. 3, every person who shall have any beasts or other cattle titheable, depasturing on any waste or common whereof the parish is not certainly known, shall pay the tithes thereof where the owner of the cattle dwells.

Under Inclosure Acts.] By the General Inclosure Act (8 & 9 Vict. c. 118), s. 39, if it is represented to the commissioners by the valuer acting in any inclosure that the boundaries of a parish or manor in which any land is to be inclosed, and of a parish, &c., adjoining thereto, are not sufficiently ascertained and distinguished, they or an assistant commissioner may (after giving such notices as they think necessary for the protection of the rights of all persons interested) ascertain and set out the same; and the boundaries so ascertained, &c., are declared to be the boundaries of such

parishes, &c. The boundaries are to be published by leaving a description of them with one of the churchwardens or overseers of the several parishes.

An appeal is given to any party dissatisfied, or the determination of the commissioners may be removed into the Queen's Bench. See 41 Geo. 3, c. 109, s. 3.

By sect. 2, the boundaries may be straightened. See 3 & 4 Vict. c. 31, s. 2.

By the 12 & 13 Vict. c. 83, s. 1, the valuer, with the approbation of the commissioners, may declare by his award how much and which part of any lands to be dealt with are to be situate in any parishes in which any of such lands are situate. But this cannot be done where there is any dispute as to the parish in which such lands are situate.

Under the Tithes Acts.] By the 1 Vict. c. 69, s. 2, where the tithes of any parish or district are to be commuted, the Tithe Commissioners are empowered to ascertain the bounds of such parish or district, on being requested so to do by two thirds in value of the owners of lands therein in writing, under their hands, or the hands of their agents, signed at a parochial meeting called for that purpose, under the provisions of the Act. See *Re Dent Commutation*, 8 Q. B. 43; *Reg. v. Hobson*, 19 L. J. Q. B. 262. And by 2 & 3 Vict. c. 62, s. 34, in case of any question between any parishes or townships, or between two or more landowners touching the boundaries of such parishes, &c., or the lands of such landowners, or if such parishes or townships, or landowners, shall be desirous of having such boundaries ascertained, or a new boundary defined, the Tithe Commissioners may (on application in writing of a majority of not less than two thirds in number and value of the landowners of such parishes, &c., in the case of parochial boundaries, or on the like application of such two or more landowners in the case of boundaries between their lands) set out and define the ancient boundaries, or define a new boundary, as they see fit. But this does not extend to the boundary of a county, or to that of copyhold or customary land, unless the written consent of the lord has been obtained. See *Re Ystradgunlais Commutation*, 8 Q. B. 32. Such an award is not evidence as to the former boundary. *Reg. v. Madeley*, 15 Q. B. 43. See also 3 & 4 Vict. c. 15, s. 28.

SECTION III.—FORMATION OF NEW PARISHES.

Church Building Acts.] The increase of population induced the Legislature, in the early part of this century, to grant facilities for the erection of new churches. It was an important part of the general scheme to give to the churches so established a peculiar district, in the nature of a separate parish, wherever it might be found expedient. The powers for this purpose were vested in the Commissioners for Building New Churches, whose powers were in 1857 transferred to the Ecclesiastical Commissioners. These Church Building Acts are very numerous, and their provisions are too extensive to permit of anything beyond a cursory view of some of their more prominent features being here given.

There are also other Acts, called the New Parishes Acts, 1843, 1844, and 1856, which give extensive powers for forming new parishes in populous districts to the Ecclesiastical Commissioners.

Division of Parishes.] If the Ecclesiastical Commissioners think it expedient to divide any parish into two or more separate parishes for all ecclesiastical purposes [or to divide off parts of parishes, or to make any extra-parochial place a district parish; 1 & 2 Vict. c. 107, s. 12], they may, with the consent of the bishop of the diocese under his hand and seal, apply to the patron of the parish church for his consent; and, upon his signifying it under his hand and seal, the commissioners are to represent the whole matter to the King in Council, stating the proposed bounds of such division, with the relative proportions of glebe lands, tithes, moduses and other endowments, and the estimated amount of fees, oblations or other ecclesiastical dues or profits within each division, upon which his Majesty in Council may direct such division to be made: provided that it shall not completely take effect till after the death, resignation, or avoidance of the existing incumbent. 58 Geo. 3, c. 45, s. 16.

By 59 Geo. 3, c. 134, s. 9, the commissioners may, with the consent of the bishop, in dividing any parish and apportioning the glebe or other endowments, apportion also the permanent charges in respect thereof or affecting the same or the incumbent; and the charges so apportioned are thereafter to be borne by each division or the spiritual person serving it.

As to dividing parishes by the Ecclesiastical Commissioners, see *post*, p. 10, NEW PARISHES ACTS.

Consolidated Chapelries.] The 59 Geo. 3, c. 134, s. 6, reciting that a considerable population is frequently collected at the extremities of parishes or in extra-parochial places contiguous to each other, at a distance from the churches or chapels thereof, enacts, that it shall be lawful for the commissioners, with such consent as before mentioned, to consolidate any such contiguous parts into a separate and distinct *district* for all ecclesiastical purposes, and to cause such district to be named and ascertained by described bounds, and such name and bounds, when approved by his Majesty in Council, to be enrolled in Chancery and in the registry of the diocese; and to make grants or loans for building, or to build any chapel, with or without cemeteries, for the use of such district; and to constitute such district a *consolidated chapelry*, with similar privileges as to marriages, burials, fees, &c., as if such chapelry were a distinct parish; and all such chapelries shall be deemed benefices, and be subject to the jurisdiction of the bishop and archdeacon, and to all laws concerning presentation, appointment, and lapse, and relative to holding benefices and churches.

The 8 & 9 Vict. c. 70, s. 9, and 14 & 15 Vict. c. 97, s. 19, explain and extend this provision.

Ecclesiastical Districts.] If the commissioners think it not expedient to make such divisions into separate parishes as aforesaid, but into ecclesiastical districts, they may report accordingly to his Majesty in Council, who may order such division into ecclesiastical districts as aforesaid to be made, or an extra-parochial place may be made a district parish or district chapelry. 58 Geo. 3, c. 45, s. 21.

Such districts shall be separate and distinct district parishes, and the churches and chapels assigned to them, when consecrated, shall be district parish churches for all purposes of ecclesiastical worship and performance of ecclesiastical duties, and as to all marriages, christenings, churchings, and burials, and the registry thereof, and in relation to all fees, oblations, and offerings, and as to all other purposes. Sect. 24. But such divisions are not to affect any lands, glebe, tithes, moduses, or endowments of the original church, sect. 30; nor any poor or other parochial rate, or the persons interested therein, except church rates, as regulated by the Act. Sect. 31.

Boundaries.] Boundaries of new parishes created by any com-

plete division, and of ecclesiastical districts, are to be ascertained, and the description of such bonds enrolled in Chancery and registered in the registry of the diocese, and notice thereof given as the commissioners direct, sec. 22 ; and such boundaries are to continue the boundaries of such parishes or districts until altered as hereinafter mentioned. Sect. 24.

Alteration of Boundaries.] The Queen in Council may, upon the representation of the commissioners, made with the consent of the bishop and of the patron and incumbent of the parish church, order the boundaries of any distinct and separate parish, or district parish or chapelry formed under the 58 Geo. 3, c. 45, or the 59 Geo. 3, c. 134, to be altered, such order to be enrolled and registered as in the case of the original order. 58 Geo. 3. c. 45, s. 21 ; 1 & 2 Vict. c. 107, s. 12 ; 3 & 4 Vict. c. 60, s. 6 ; 8 & 9 Vict. c. 70, s. 16 ; 11 & 12 Vict. c. 37, ss. 2, 3.

Assigning District Chapelry to Church.] The commissioners may assign a district chapelry to any church or chapel, with such consent as before mentioned ; and such churches or chapels may be augmented by the Governors of Queen Anne's Bounty. 2 & 3 Vict. c. 49, s. 3. See 3 & 4 Vict. c. 60, s. 1. A portion of an adjacent parish may be added to an existing district chapelry. 11 & 12 Vict. c. 37, s. 3.

Any district chapelry may be converted into a separate and distinct parish for ecclesiastical purposes, or into a district parish. 3 Geo. 4, c. 72, s. 16. The commissioners may assign a new district chapelry to any church or chapel situate in any district chapelry already formed. 3 & 4 Vict. c. 60, s. 1.

Chapel of Ease.] By 1 & 2 Will. 4, c. 38, s. 23, the bishop may, with the consent of the patron and incumbent, by writing under his hand and seal, declare a chapel of ease at a considerable distance from the parish church, having chapelries, townships or districts belonging to it (if endowed with such a provision as will ensure a competent stipend to the minister), to be a separate and distinct parish for all spiritual purposes. And by 1 & 2 Vict. c. 107, s. 7, these provisions shall extend to churches and chapels whether erected and consecrated before or after the passing of such Act. And by sect. 10 of the latter Act, where a church or chapel has been built by subscription, and endowed and augmented by Queen Anne's Bounty, the commissioners, with the consent of the bishop, patron and incumbent, may make it a distinct parish.

By 11 & 12 Vict. c. 37, s. 1, a district formed under the 1 & 2 Will. 4, c. 38, is to be considered as an original parish for the purpose of further division.

Annexing Tithings, &c.] By 1 & 2 Vict. c. 106, s. 26, tithings, hamlets, chapelries and other places or districts separated from the parish or mother churches to which they belong, and places altogether extra-parochial, may be annexed to parishes or districts to which they are contiguous, or may be constituted separate parishes for ecclesiastical purposes. And when it appears to the archbishop, with respect to his own diocese, or is represented to him by any bishop, that any such tithing, &c., may be advantageously separated from any parish or mother church, and either be constituted a separate benefice by itself, or be united to any other parish to which it may be more conveniently annexed, or to any adjoining tithing, hamlet, chapelry, place or district, parochial or extra-parochial, so as to form a separate parish or benefice, or that any extra-parochial place may with advantage be annexed to any parish to which it is contiguous, or be constituted a separate parish for ecclesiastical purposes, the archbishop or bishop may draw up a scheme in writing, and if the patron consent thereto, and the archbishop certify his consent to her Majesty in council, the scheme may be carried into effect by an Order of Council. See 2 & 3 Vict. c. 49, s. 6, by which the provisions of this Act are extended to cases where the benefice to be affected is vacant.

New Parishes Acts.] The 6 & 7 Vict. c. 37, s. 9, enables the *Ecclesiastical Commissioners* to constitute any part of a parish, chapelry, district, or extra-parochial place containing a large population, and where there is insufficient provision for public worship, a separate district for ecclesiastical purposes; and upon a church or chapel being provided and consecrated, the district is to become a separate parish, and the minister, duly licensed, the perpetual curate thereof. Sects. 15 and 16; see also 7 & 8 Vict. c. 94. These Acts have been extended by the 19 & 20 Vict. c. 104, which enables the commissioners to constitute districts under the provisions of the former Acts, notwithstanding that there may be within the district a consecrated church or chapel. Sect. 1.

Division of Parishes.] The *Ecclesiastical Commissioners* may, under the authority of an Order in Council, divide any parish into two or more separate parishes for all ecclesiastical purposes, and fix and settle the respective proportion of tithes, glebe lands, and

other endowments which are to arise, remain, and be within each of such divisions. The scheme for the division is to set forth the particular expediency of it, and how far it may be necessary in consequence thereof to make any alteration in ecclesiastical jurisdiction, and how the changes consequent on such division in respect of patronage, rights of pew-holders, and other rights and privileges, glebe lands, tithes, rent-charges, and other ecclesiastical dues, &c., may be made with justice to all parties interested, and is to contain directions and regulations relative to the duties and character of the incumbents of the respective divisions, and the performance of the offices and services of the church in the respective churches thereof, and to the fees to be taken for the same, and to any other matter or thing which may be necessary or expedient by reason or in consequence of such change. But such division is to be made only with the consent of the patron and of the bishop of the diocese, to be testified as provided by the 1 & 2 Vict. c. 106, ss. 126 and 128. And no such provision is to take effect until after the first avoidance then next ensuing of the church of the parish to be divided, unless with the consent of the actual incumbent thereof. Sect. 25.

New cures formed partly out of one diocese and partly out of another, now form part of one diocese only. 35 & 36 Vict. c. 14.

Rights, &c., of New Parishes.] The incumbent of every new parish created under these Acts is, saving the rights of the bishop of the diocese, to have sole and exclusive cure of souls, and the exclusive right of performing all ecclesiastical offices within its limits for the resident inhabitants thereof, who are, for all ecclesiastical purposes, to be parishioners thereof, and of no other parish; and such new parish is, for the like purposes, to possess all the same rights and privileges, and to be affected with the same liabilities, as belong to a separate parish, and no others. But this is not to affect the legal liabilities of any parish regulated by local Act of Parliament, or the security for any money legally borrowed under the Act of Parliament or otherwise. 19 & 20 Vict. c. 104, s. 15.

Sects. 23 and 26 provide for the endowments of any parish district or benefice, and the church or chapel thereof. 28 Vict. c. 42, empowers rectors or vicars to sell tithes to district church, with the assent of the bishop and the patron of the rectory or vicarage.

Every separate parish, when the division becomes complete, is to be a rectory, vicarage, donative or perpetual curacy, according to

the nature of the original church of the parish so divided, and subject to the same jurisdiction and laws. Sect. 19.

Officers of the Church to be performed.] By the 59 Geo. 3, c. 134, s. 17, all Acts, laws and customs, relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations or offerings, are to apply to all districts, and consolidated or district chapelries, and divisions of parishes or extra-parochial places, whereof the boundaries are enrolled in Chancery under the provisions of the Church Building Acts, and in the churches and chapels whereof banns are allowed to be published, and marriages, christenings, churchings, or burials allowed to be solemnized, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls therein, or serving the same, in like manner as if the same had been ancient, separate and distinct parishes and parish churches by law. See 8 & 9 Vict. c. 70, s. 10.

By 19 & 20 Vict. c. 104, s. 11, the Ecclesiastical Commissioners may, if they think fit, upon application of the incumbent of any church or chapel to which a district belongs, with the consent in writing of the bishop of the diocese, make an order, under their common seal, authorizing the publication of banns of matrimony and the solemnization therein of marriages, baptisms, churchings, and burials, according to the laws and canons now in force in this realm; and all the fees payable for the performance of such offices, as well as all the mortuary and other ecclesiastical fees, dues, oblations or offerings arising within the limits of such district, are to be payable and be paid to the incumbent of such district. But fees reserved or of right belonging to incumbent or clerk of original parish shall be payable to such incumbent till he vacates his incumbency or relinquishes such fees, or to such clerk until he vacates his office, or is compensated, and then to incumbent or clerk of new district. Sect. 12.

The incumbent of the church of every parish or new parish for ecclesiastical purposes not being a rector, who is authorized to publish banns of matrimony in such church, and solemnize therein marriages, churchings, and baptisms, and is entitled to have the entire fees arising from the performance of such offices without any reservation thereout, is, for the purpose of style and designation only, to be deemed and styled the vicar of such church and parish or new parish, and his benefice to be styled a vicarage. 31 & 32 Vict. c. 117.

Patronage may be assigned.] The patronage of any church or chapel to which a district is assigned, and of which the incumbent of the original parish is patron by virtue of such incumbency, or of any new parish formed under the New Parishes Acts, or of any existing parish or district having neither incumbent nor patron, or of any benefice the patronage of which is vested in the Crown, or in the Chancellor of the Duchy of Lancaster, or in the Duke of Cornwall, or of any benefice the patronage of which is vested in any ecclesiastical or lay corporation, aggregate or sole; provided that the permanent annual endowment of such benefices respectively does not exceed 100*l.* per annum, nor the annual income of the same from all sources 250*l.* per annum (such income to be calculated as provided by the 1 & 2 Vict. c. 106, s. 8, and when any portion of such income shall arise from pew-rents, the value of such portion shall be calculated upon an average of the three years last preceding), may be assigned either in perpetuity or for one or more nominations. 19 & 20 Vict. c. 104, s. 16.

But the commissioners may not assign such patronage in perpetuity for any less consideration than the building a church, as and for the church of such parish, district or benefice, and providing for the permanent endowment of such church a clear yearly sum of at least forty-five pounds, or the permanently endowing the church or chapel of such parish, district or benefice with a clear yearly sum of 150*l.* But they may, in lieu of such sums, or as part thereof, accept any gift, benefaction or property which they judge to be suitable in its nature; provided that such gift, &c., is in their judgment equivalent to the said sums in each case respectively, or to the part thereof in lieu of which it shall have been accepted. Sect. 17.

Such assignment shall be made in the following cases with the following consents only; that is to say, in the case of a benefice in the patronage of the Crown, or the Chancellor of the Duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, with the consent of the patron thereof; and in the case of a benefice in the patronage of an incumbent of any other benefice, with consent of the bishop of the diocese, and the patron of such other benefice, if in private patronage, shall have one month's notice from Ecclesiastical Commissioners, who may require the commissioners to assess the amount of diminution in the value of his

advowson, or have it ascertained by arbitration, 32 & 33 Vict. c. 94, s. 10; and in the case of any parish or district having neither incumbent nor patron, with the consent of the bishop of the diocese; such consents to be testified as provided by the 1 & 2 Vict. c. 106, sects. 126 and 128. Sect. 18.

Sect. 24 provides for the appointment of trustees (not to exceed five) to whom the patronage may be assigned.

Notice of the intention to make the assignment is to be given to the patrons. Sect. 19.

Patronage not to be sold.] Whenever the right of patronage is, pursuant to the above provisions, vested in perpetuity in any body of persons by reason of their having augmented the endowment, and wherever the benefice is, at the time of the transfer of patronage, already permanently endowed with an annual sum of not less than 100*l.*, or wherever its annual income from all sources, calculated upon an average of three years immediately preceding the augmentation, amounts to 150*l.*, no subsequent sale, assignment or other disposition of the patronage is to be made for a valuable consideration for thirty years after the transfer, unless the entire proceeds be legally secured to the further permanent augmentation of such benefice; and every such sale, &c., is declared illegal, and the presentation, &c., thereupon void, and the right of patronage is to lapse to the bishop. But where the patronage of a church or chapel, to which a district is assigned, is vested in the incumbent of the original parish, &c., out of which the district was taken, the person holding the incumbency at the passing of this Act is not to be deprived of the patronage by any assignment during his incumbency without his consent. Sect. 21.

Incumbent of Original Parish may be Patron.] Upon the constitution of a new parish under this Act, the commissioners may, until the conditions relating to the assignment of the patronage in consideration of an endowment have been complied with, assign the patronage to the then incumbent of the original parish out of which such new parish shall have been taken, for the term of his incumbency; and if such parish shall have been formed out of more than one parish, then to one or other of the then incumbents of such parishes, for the term of his incumbency, as they shall think fit. Sect. 22.

Meaning of Parish, &c.] The expression "parish, district, or place," means and includes any ancient or distinct and separate

parish, district parish, chapelry, district chapelry, consolidated chapelry, or extra-parochial place; and the word "extra-parochial place" includes any township, vill, village or hamlet, being extra-parochial. Sect. 33.

SECTION IV.—PARISHIONERS.

Definition.] "Parishioner" is a very large word, and includes not only inhabitants of the parish, but persons who are occupiers of lands who pay the several rates and duties, though they are not resident, nor do contribute to the ornaments of the church.

Inhabitants.] "Inhabitants" is still a larger word: it takes in housekeepers, though not rated to the poor, and also persons who are not housekeepers; as, for instance, those who have gained a settlement, and by that means become inhabitants. The word "inhabitant" varies in its import, according to the subject to which it is applied. *Reg. v. Mashiter*, 6 A. & E. 153.

In *Webb v. Fearon*, 14 Ves. 22, the words "inhabitants and parishioners" were held to mean inhabitants being parishioners. There the chiefest and discreetest of the inhabitants and parishioners were to nominate to a vicarage, and it was decided that the right must be confined to ratepayers.

Generally an occupier is an inhabitant for all purposes of pecuniary charge; as the repairs of the highways by the common law, or the repair of bridges by the statute 22 Hen. 8, c. 5, if not by the common law. Lord Coke, in his commentary on this statute, 2 *Inst.* 702, after observing that the word "inhabitant" is the largest word of the kind, and describing all occupiers as inhabitants within the meaning of the statute, says that servants are not within the statute.

Casual sojourners seem not to come within either of these descriptions; as if a man take up a lodging for a week in a town, he shall not be charged to the repair of a church, or such like. *Holledge's Case*, 2 Roll. Rep. 238. Where, under a scheme sanctioned by the Court for a charity entitling a parish to elect children for Christ's Hospital, it was provided that no child should be eligible unless born in the parish, or unless his or her parents, or one of them, should be or should have been parishioners, it was held that the word "parishioner" must be construed in a honest and *bonâ fide* manner, and could not be applied to a person taking a small house

temporarily for the mere purpose of obtaining a qualification. *Etherington v. Wilson*, L. R. 20 Eq. 606 ; 44 L. J. Ch. 637. .

Power of Parishioners.] The general government of parishes, in matters of internal regulation, and the appointment of their public functionaries, is still vested, to some extent, in the parishioners themselves, though their authority in this respect has in many instances been abridged by local customs and statutory provisions. The power of the general body is exercised in public assembly, usually in what are called vestry meetings. See *post*, tit. VESTRIES.

It would, however, be a needless repetition to detail in this place their peculiar rights and privileges as against strangers, their reciprocal duties and the obligations which are cast upon them as forming a portion of the larger municipal division,—the county in which they are situate. The law upon these subjects respectively will be found in the other more appropriate parts of the work.

CHAPTER II.

CHURCHES.

- SECTION I. *Founding of Churches.*
 II. *Chancel.*
 III. *Body of the Church.*
 IV. *Pews.*
 V. *Goods and Ornaments of the Church.*
 VI. *Repairs of the Church.*
 VII. *Dilapidations.*
 VIII. *Churchyards.*
 IX. *Burial.*
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SECTION I.—FOUNDING OF CHURCHES.

Manner of Founding.] The ancient manner of founding churches, after Christianity had become established in the kingdom, was for the founders to make application to the bishop of the diocese, and when his licence had been obtained, the bishop or his commissioners fixed up a cross and set forth the ground where the church was to be built; and then the founders proceeded with the building, and when the church was finished and was endowed, and not till then, the bishop consecrated it. *Degge, Pt. I. c. 12.*

Consecration.] In the Church of England every bishop is left to his own discretion as to the form of consecrating churches and chapels.

Wakes.] From the dedication of churches fairs and wakes originated, to commemorate the munificence of those who had founded and endowed them. It was on this account that fairs were generally kept in churchyards and even in the churches, till the indecency and scandal became so great as to require a reformation.

Increase of Churches.] The number of churches was augmented from time to time, chiefly by the piety of individuals, till the

practice of bequeathing their property to pious uses was encouraged by the priests to such an alarming extent, that the Statutes of Mortmain were passed to prevent the continuance of the evil. Within the present century, however, several Acts of Parliament have been passed, authorizing the gift, by deed or will, of land to the extent of five acres, or other property not exceeding 300*l.* towards erecting, rebuilding or providing any church or chapel, where the liturgy and rites of the Church of England are observed, or any house of residence, &c., &c. 43 Geo. 3, c. 108; 51 Geo. 3, c. 115. And a considerable addition has since been made under the powers of the 58 Geo. 3, c. 45; 59 Geo. 3, c. 134; and 3 Geo. 4, c. 72, through the agency of commissioners appointed to examine into the state of parishes, and to ascertain the means of church accommodation. The 5 Geo. 4, c. 103, and the 1 & 2 Will. 4, c. 38, extended by 1 & 2 Vict. c. 107, gave power to persons willing to build churches by subscription, or partly by subscription and partly by rates, to do so without the concurrence of the commissioners, if the consent of the bishop, and that of the incumbent and patron, where necessary, were procured. See also 2 & 3 Will. 4, c. 61; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 8 & 9 Vict. c. 70; *Williams v. Brown*, 1 Curt. 53.

Landlords are now empowered to convey land to be used as sites for places of worship and residence of minister. If the land so conveyed ceases to be so used it is to revert. 36 & 37 Vict. c. 50, s. 1.

Persons under disabilities are empowered to convey land for the same purposes. Sect. 3.

And the Ecclesiastical Commissioners may act as trustees of any sites given under the Act for the purposes of the Church Building Acts. Sect. 5.

Church Trustees.] Trustees may be appointed in any parish for the purpose of accepting by bequest, donation, contract, or otherwise, and of holding any contributions which may be given to them for ecclesiastical purposes in the parish.

The trustees are to be the incumbent and two householders or owners or occupiers of land in the parish, to be chosen, one by the patron, and the other by the bishop of the diocese.

The trustees may pay over to the churchwardens to be applied by them either to the general ecclesiastical purposes of the parish, or to any specific ecclesiastical purposes of the parish, any funds in

their hands, and the funds so paid over are not to be applied to any other purpose, provided that further powers are thereby conferred on churchwardens with regard to the ecclesiastical purposes of the parish than they are by law entitled to, and provided also that due regard is had to the directions of the donors of funds contributed for any special ecclesiastical purposes.

The trustees have powers of investment, and are obliged annually to account to the vestry for their receipts and expenditure during the preceding year. 31 & 32 Vict. c. 109, s. 9.

The laws relating to marriages, christenings, churchings and burials, and the registering thereof, and to fees, oblations or offerings, are to apply to distinct parishes and to district parishes, to be made under the Church Building Acts, when complete, after avoidance of the existing incumbents, and to the churches and chapels thereof, and to the ecclesiastical persons serving them, in like manner as if they had been ancient separate parishes and parish churches. 58 Geo. 3, c. 45, s. 27; 8 & 9 Vict. c. 70, s. 10.

All churches built or acquired under those Acts, whether belonging to parishes completely divided or to district parishes, are, after consecration, to become distinct benefices and churches for all ecclesiastical purposes.

Proprietary Chapels.] Proprietary chapels are anomalous, being unknown to the constitution of the Church of England; and can possess no parochial rights.

SECTION II.—CHANCEL.

Whence so called.] Chancel, *cancellus*, seems properly to be so called from the lattice-work partition betwixt the choir and the body of the church, so framed as to separate the one from the other, but not to intercept the sight. 1 Burn, *Ecc. L.* 341.

To whom it belongs.] The freehold of the chancel is in the rector or impropriator, and the burthen of repairing it is cast upon him, as the burthen of repairing the body of the church is cast upon the parishioners. A lay rector is not entitled, as of right, to make a vault or affix tablets in the chancel without leave of the ordinary; for although the freehold of the chancel may be in the rector, yet the use and enjoyment of it belongs to the parishioners. *Rich v. Bushnell*, 4 Hagg. 164.

The circumstance that the freehold of a chancel forming part of the church may be in the rector of the parish does not annul the right of a person to its exclusive right, if built and repaired by him and his ancestors from time immemorial, and used as place of burial and for hearing divine service. *Churton v. Frewen*, L. R. 2 Ex. 658; 36 L. J. Ch. 660.

The freehold of a chapel or lesser chancel may be vested in a private person, though such chapel or chancel forms an integral portion of and is under the same roof with a parish church. *Chapman v. Jones*, L. R. 4 Ex. 273; *Duke of Norfolk v. Arbutnot*, L. R. 5 C. P. D. (C. A.) 390; 49 L. J. C. A. 782.

The enjoyment of such chapel or chancel, and the right to its exclusive use, is not necessarily annexed to a dwelling-house. *Id.*

Seats in Chancel.] In *Clifford v. Wicks*, 1 B. & Ald. 498, Bayley, J., says the general rule is, that the rector is entitled to the principal pew in the chancel, but that the ordinary may grant permission to other parishioners to have pews there. And see *Morgan v. Curtis*, 3 M. & Ryl. 389; *Spry v. Flood*, 2 Curt. 353.

In some places, where the parson repairs the chancel, the vicar, by prescription, claims the right of a seat for his family, and of giving leave to bury there, and a fee upon the burial of any corpse. *Johns*. 242.

SECTION III.—BODY OF THE CHURCH.

Nave.] The word *nave* is probably derived from the Saxon, and signifies properly the middle or concave part of anything, and is thence transferred to signify the body or middle part of the church, extending from the west end to the transept or choir. Some writers, however, have derived the word from *ναός* (a temple); others from *navis* or *ναῦς*, from a fanciful resemblance to a ship. 1 *Burn, Ecc. L.* 342.

To whom it belongs.] The freehold of the body of the church is in the parson, and he is the proper person to sue for any injury to the freehold; but custom or common law has cast the burthen of repairing the body of the church upon the parishioners. But he is not such an "owner" under the Metropolitan Building Act, 1855, Part II., as to make him liable for the repairs of the church. *R. v.*

Lee, L. R. 4 Q. B. D. 75. Though the freehold of a parish church may be in a lay rector, the right of the possession of the church is in the minister and churchwardens. *Griffin v. Deighton*, 33 L. J. Q. B. 181.

Aisle.] The lateral divisions of a church or of any part of it, as nave, choir, or transept, are called its aisles. The word is said to proceed from the French *aile* (ala), a wing; for the Norman churches were built in the form of a cross, with a nave and two wings.

Aisle may be Private Property.] As the chancel seems to be peculiarly the part of the church in which the incumbent or parson has an especial interest, so the aisle is frequently distinguished as belonging either wholly or in part to private families or individuals, or rather to particular estates within the parish, the owners of which, it is presumed, originally erected the aisle for the accommodation of their household, and their successors in the estate claim it as appurtenant to the ancient mansion or dwelling-house. But in order to complete this exclusive right, it is necessary, not only that it should have existed immemorially, but that the owners of the mansion, &c., in respect of which it is claimed, should have from time to time borne the expense of repairing that which they claim as having been set up by their predecessors. 3 *Inst.* 202. Thus an aisle in a church, which hath time out of mind belonged to a particular house, and been maintained and repaired by the owner of that house, is part of his frank tenement, and the ordinary cannot intermeddle therewith. And residence in the parish is not necessary to this right. *Gibs.* 198. But no such title can be good, either by prescription or upon a new grant, by faculty from the ordinary to a man and his heirs; but the aisle must always be supposed to be held in respect of a house, and will always go with the house to him who inhabits it. *Hussey v. Leighton*, 12 Rep. 106; *Crook v. Sampson*, 2 Keb. 92; 2 Bulst. 150; *Barrow v. Keen*, 1 Sid. 361.

Seats in Aisle.] A seat in an aisle may be prescribed for by an inhabitant of another parish. *Gibs.* 198; *Fuller v. Lane*, 2 Add. R. 427; *Barrow v. Keen*, 1 Sid. 361. Or as appurtenant to a house out of the parish; *Davis v. Witts*, Forrest R. 14; though not a seat in the nave of a church. *Ib.* But see *Lousley v. Hayward*, 1 Y. & J. 583. But it is otherwise if he hath only used to sit and bury in the aisle, and not repaired it; for the constant sitting and

burying, without reparation, doth not gain any peculiar property therein; but the aisle being repaired at the common charge of the parish, the common right of the ordinary takes place, and he may, from time to time, appoint whom he pleaseth to sit there. *Gibbs*. 197; *Frances v. Ley*, Cro. Jac. 366—604.

SECTION IV.—PEWS.

By whom Erected and Repaired.] The general charge of erecting seats in churches, and of keeping them in repair, lies upon the parishioners, unless they be relieved by any particular person being chargeable by prescription to rebuild or repair the same. *Degge*, Pt. 1, c. 12.

Right to Seats.] By the general law, and of common right, all the pews in a parish church are the common property of the parish: they are for the use, in common, of the parishioners, who are all entitled to be seated orderly and conveniently, so as best to provide for the accommodation of all. Accordingly, the churchwardens are bound in particular not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation with the rest, though they are not entitled to equal accommodation, supposing the seats not to be all equally convenient. *Fuller v. Lane*, 2 Add. R. 425. Upon a person quitting the parish, the right to use a seat in the body of the church, whatever was the nature and origin of that right, is at an end, because he has ceased to be a parishioner. *Ib.*; *Byerley v. Windus*, 5 B. & C. 18.

Renting or Purchasing Seats.] Every parishioner has a right to a seat in the church without any payment, either for the purchase or as rent for the same; and, if necessary, occupiers of pews who are not parishioners, having no prescriptive right therein, may be put out by the churchwardens to enable them to seat parishioners.

Galleries.] When the number of parishioners increase, so that the seats are insufficient to accommodate all who apply for them, the parish is bound, and may be compelled by ecclesiastical censures to provide against these inconveniences; and therefore, upon an application for a faculty to erect a gallery in the parish church, the Court will consider the grounds of the application, although it is alleged that a great majority of the inhabitants disapprove of it.

For the Court may refuse the whole parish joined together, or may grant, if it appears necessary, a prayer, upon the application of one against all the rest. But though the Court is not bound by the wish of the majority, it will pay great attention to it; and the measure should be regularly submitted to the consideration of the vestry in the first instance; and if it is then approved, though very few parishioners attend, they have the power of the parish delegated to them; and unless it is afterwards clearly made out that a gallery is unnecessary, or that it is highly inexpedient, the Court will decree the faculty. *Groves v. The Rector of Hornsey, &c.*, 1 Hagg. R. 188; *Evans v. Slack*, 38 L. J. Ecc. 38. But if more pews or galleries be necessary, it is said that the churchwardens alone cannot erect them; some say it cannot be done without the licence of the ordinary; and it is clear if there be a dispute whether more pews are necessary or where they shall be placed, the ordinary is the sole judge. But if the incumbent, churchwardens, and parishioners unanimously agree that more pews are necessary, and that they shall be fixed in such a place, it doth not seem that there is any necessity for the ordinary's interposition; for there can be no need of a judge where is no controversy. *Johns.* 163; *Ayl. Pur.* 484.

Distribution of Seats.] In the absence of any custom to the contrary, the distribution of seats rests with the ordinary or bishop, who may place and displace whomsoever he pleaseth. 2 *Roll. Abr.* 288. Neither the minister nor the vestry have any right whatever to interfere in seating and arranging the parishioners, as often erroneously supposed.

The churchwardens are the persons who, as the officers of the bishop, have a general authority from him to act in seating the parishioners, and they are subject to his control, if any complaint is made against them. *Pettman v. Bridger*, 1 Phill. Ecc. Ca. 323; see *Reynolds v. Monkton*, 2 M. & Rob. 384. The rule that the general disposal of the seats appertains to the churchwardens must receive some limitation where the seats are all movable, or where chairs alone are in use. *Ritchings v. Cordingley*, L. R. 3 Ad. & Ec. 119.

Where a Church is rebuilt or enlarged.] Whenever, from the increase of the population, or the dilapidated state of the structure, it is determined either to pull down the church or enlarge it, or to make a new arrangement of the pews and sittings, the consent of the inhabitants in vestry should, as a matter of prudent precaution,

be first obtained. This having been done, the churchwardens should obtain a faculty from the bishop empowering them to carry into effect the wishes of the parishioners, and if necessary a commission may issue directed to two or three clergymen, and the same number of laymen, named by the churchwardens, resident in the neighbourhood, but having no interest in the parish, authorizing them to allot and appropriate the sittings. See 8 & 9 Vict. c. 70, s. 1.

This they are generally directed to do in a certain order: 1st. Those who had, before the issuing of the commission, seats by faculty or prescription are to have others allotted to them as appurtenant to the same houses, as near as may be to the site of their former seats; 2nd. Those who have contributed by their subscriptions to the building, enlargement or repairs, or who have actually occupied seats, though not by faculty or prescription, are to have sittings according to the amount of their subscriptions, their quality, and the number of their families, but only so long as they continue to abide in the parish and habitually resort to church; 3rd. To the rest of the inhabitants according to their station and requirements, and on the same tenure.

The commission directs what notice shall be given by the commissioners of the time and place of their meetings, and as soon as the church is in such a state of forwardness as to enable them to judge of the comparative advantages of the different sittings, they give the requisite notice and proceed to receive the claims, with a plan of the church before them. The churchwardens and parish clerk, or other old inhabitant, should be present for the guidance and assistance of the commissioners.

Those who have a faculty to show, which is rarely the case, are of course entitled to an equivalent for the seats they have given up, or as nearly so as may be. In dealing with prescriptive claims, the commissioners usually require evidence of 'at least twenty years' exclusive use of the pew or sitting by the occupiers of the particular house to which it is said to be appurtenant, and such further evidence of repairs or otherwise, as may justify them, with some degree of reason, in coming to the conclusion that a faculty may once have been obtained and subsequently lost.

In disposing of the other claims the commissioners of course regard, as far as possible, the wishes of the applicants in respect of the locality of their sittings.

Allotting Free Seats.] When a grant has been obtained from a church-building society in aid of the reseating a church, it is always required, as a condition attached to the grant, that a certain number of sittings shall be reserved for the use of the poorer inhabitants. These are not allotted to individuals by the commissioners, but the particular seats are described in the allotment, and a mark "Free Sittings," is placed upon them.

These seats ought to be as advantageously situate as those allotted to the better class of inhabitants. See 19 & 20 Vict. c. 104, s. 6. It is convenient to reserve one or two benches, near the pulpit and reading desk, for the aged and infirm poor, and these should, in practice, be placed at the disposal of the clergyman.

In *Groves v. The Rector of Hornsey*, 1 Hagg. R. 188, it was objected against building a gallery to accommodate parishioners who had applied for seats, that the churchwardens might put different families into the same pew, as the pews were not appropriated by any faculty and would afford more sittings than were then occupied; but Lord Stowell said they might be appropriated by prescription or by possessory right on allotment by the churchwardens; and a prescriptive title cannot be altered by any authority, nor a possessory title by the churchwardens alone, though it may be by the ordinary. And he intimated, that unless there was ample room, it would be improper to put individuals of different families in the same pews, which might produce contention and inconvenience. See also *Tattersall v. Knight*, 1 Phil. Ecc. Ca. 232.

Customs as to ordering Seats.] By custom the churchwardens may have the ordering of the seats as in London. *Wats.* c. 39. A custom, time out of mind, of disposing of seats by the churchwardens and major part of the parish, or by twelve or any particular number of the parishioners, is good, and if the ordinary interpose, a prohibition will be granted. *Gibs.* 198; *Presgrove v. Shrewsbury*, 1 Salk. 167.

Exclusive Right to Pew.] But both the ordinary and the churchwardens may be excluded from exercising any right in the disposal of a pew, where an individual has acquired an absolute and exclusive right therein. To exclude the jurisdiction of the ordinary, it is necessary that the person claiming a pew should show a faculty or a prescription, which supposes a faculty to have existed time out of mind, the faculty itself being lost. *Tattersall*

v. *Knight*, 1 Phil. Ecc. Ca. 237. By the general law there can be no property in pews. The ordinary may grant a pew to a particular person, while he resides within the parish, or there may be a prescription from which a faculty is presumed; but as to personal property in a pew, the law knows of no such thing. *Hawkins v. Compiegne*, 3 Phil. Ecc. Ca. 16.

By Faculty.] Faculties appropriating certain pews to certain individuals, in different forms, and with different limitations, have been granted in former times with too great facility. The appropriation has sometimes been to a man and his family, "so long as they continue inhabitants of a certain house in the parish." The more modern form is, "so long as they continue inhabitants of the parish." The first of these is, perhaps, the least exceptionable form.

By Prescription.] To support a prescriptive right to a pew, there must be some evidence from which a faculty can reasonably be presumed. The strongest evidence of the kind is the building and repairing time out of mind; mere repairing for thirty or forty years will not exclude the right of the ordinary. The possession must be ancient, and going beyond *living* memory, though not extending to legal memory. *Per* Lord Stowell, *Walter v. Gunner*, 1 Hagg. R. 322.

Seat goes with House.] A seat or pew in the nave or body of the church may be prescribed for, as belonging to a house; and the occupier of the house for the time being is entitled to the use of the pew, and not the owner of the estate; and it may be transferred with the messuage. *Woollocombe v. Ouldridge*, 3 Add. R. 6. The right to use a pew may be apportioned, and in consequence of a house being subdivided several families may become entitled to use a pew belonging to the original messuage. This is a question to be settled among the respective owners. *Harris v. Drue*, 2 B. & Ad. 167. A parishioner who claims a legal right by prescription to a pew in the nave of his parish church must, in order to displace the general right of the ordinary, not only show that the pew has been occupied by him or his predecessors in title in respect of an ancient house in the parish for a period more or less extended, but must prove, if any alteration or repair of the pew has been necessary, that such repairs or alterations were executed at the expense of those who at the time claimed the prescriptive right to it. *Crisp v. Martin*, L. R. 2 P. D. 15.

Pews in New Churches.] The Church Building Acts make provisions as to pews in churches built subsequently to the year 1818. Seats are to be appropriated for the minister and his family, and not less than one-fifth are to be free. 58 Geo. 3, c. 45, s. 75. Subscribers, being parishioners, are to have choice of pews at rates to be fixed. Sect. 76. Pews may be let or assigned to parishioners. 59 Geo. 3, c. 134, s. 32; 3 Geo. 4, c. 72, s. 23.

Free Seats.] The Church Building Acts contemplate a gradual restoration of the system of freedom of seats, and greater facilities are afforded for the same object by 32 & 33 Vict. c. 94, which provides for the surrender of private pews or sittings to the bishop or the Ecclesiastical Commissioners. Such surrender is to be by deed, sect. 3; and after the surrender of such pews or sittings they are to be subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches. Sect. 5.

Pew Rents.] By 58 Geo. 3, c. 45, ss. 63, 64, the commissioners may fix the rents of pews to be let, and the produce is to form a fund, out of which provision is to be made for the spiritual person who is to serve the church or chapel, and a clerk; the stipend is to be assigned by the commissioners, with the consent of the bishop. And see 59 Geo. 3, c. 134, s. 6. By sect. 26 of the latter Act, in the case of a church or chapel built, acquired or appropriated under its provisions, or under 58 Geo. 3, c. 45, the commissioners may direct that the pew rents shall be assigned to the parish or district; and the churchwardens shall thereout pay the stipend assigned to the minister or clerk. But the sum to be paid to the minister and clerk is not to exceed the rent for which the pews were let during the preceding year. See also 5 Geo. 4, c. 103, s. 5. These enactments constitute not merely the relation of trustees and *cestui que trust* between the churchwardens and the minister, but they impose on the churchwardens the legal duty of paying over the pew rents applicable to the minister's stipend as soon as they are received, and the minister has therefore a right of action at law on the statute, or for money received, against the churchwardens, in the event of their not performing that duty. *Lloyd v. Burrup*, L. R. 4 Ex. 68; 38 L. J. Ex. 25.

If it appears to the Ecclesiastical Commissioners that sufficient funds cannot be provided from other sources, but not otherwise, they may, with the consent of the bishop of the diocese under his

hand, order and declare by an instrument in writing under their common seal, that annual rents may be reserved and taken in respect of pews or sittings in any church to which a district is hereafter assigned under the provisions of the New Parishes Acts, and such rents are to be charged, levied and taken by the churchwardens of such church after the rate specified in such instrument, and the proceeds, not otherwise appropriated by law, are to be applied towards the repair and maintenance of the church, and the maintenance of the minister, and the services thereof, and the endowment thereof in manner specified in such instrument, and to no other uses. But half, at least, of the sittings are to be free, and it is to be shown to the satisfaction of the commissioners that such free seats are as advantageously situate as those for which a rent is reserved. 19 & 20 Vict. c. 104, s. 6.

Upon a permanent endowment being provided for any church in which pew rents have previously been authorized to be taken, and on such endowment being approved by the commissioners, they may, by such instrument and with such consent as aforesaid, make an equivalent reduction in the total amount of pew rents, if they are not appropriated for specific purposes, either by reducing the scale, or declaring certain specific sittings to be free. But this reduction is not to take place until after the repayment of all sums borrowed under the authority of an Act of Parliament, or Order in Council, on the security of the pew rents. Sect. 7.

The scale of pew rents may be altered with consent of the bishop; but no alteration affecting the emoluments of the incumbent is to take effect until the next avoidance of the benefice, without his consent. Sect. 8.

The Ecclesiastical Commissioners may accept a church site under a grant in which it is declared that the pews or seats, or some portion of them, shall not be let. 35 & 36 Vict. c. 49, s. 2. Where it is declared that no portion of sittings shall be let, a sufficient endowment or stipend of not less than 100*l.* per annum must be secured to the incumbent by or to the satisfaction of the commissioners, and where a portion only of the sittings are not to be let, an endowment or stipend of such amount as the commissioners may determine. Sect. 3.

Where New Church substituted.] By the 8 & 9 Vict. c. 70, s. 1, if a new church built in a parish or district parish is substituted for the old parish church, the bishop may, or may be required to, issue

a commission to the archdeacon, and two incumbents of parishes in the archdeaconry, and two laymen nominated by the churchwardens of the old church (not claiming any pew or seat in the old church), and such commissioners are to inquire into the rights of persons claiming to hold pews, &c., rent free by faculty or prescription, and examine such claims, and to send to the bishop the names of those who have substantiated claims; and the bishop, if satisfied, is to assign them seats in the new church.

By 19 & 20 Vict. c. 104, s. 5, all persons resident within the limits of any new parish or district formed under the Church Building Acts, or to be formed under the New Parishes Acts, who have claimed and had assigned to them sittings in the church of such new parish, are thereby to surrender, as to any right that they possessed, an equal number of sittings in the church of the original parish or other ecclesiastical district out of which such parish shall have been taken, unless such sittings are held by faculty, or under Act of Parliament.

SECTION V.—GOODS AND ORNAMENTS OF THE CHURCH.

Ornaments in general.] By the 1 Eliz. c. 2, s. 25, such ornaments of the church, and of the ministers thereof, shall be retained, and be in use, as were in the Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth, until other order shall be therein taken. Pursuant to which clause, in the third year of the same reign, a commission was granted to reform the disorders of chancels, and to add to the ornaments of them, by ordering the Commandments to be placed at the east end.

The parish was bound to provide everything which is necessary for the due and orderly celebration of the services of the church, and the administration of the sacraments. *Veley v. Burder*, 12 Ad. & El. 265. But since the passing of the Abolition of Church Rates Act, 1868, the parish is not bound, nor is there any means of compelling them, to provide anything.

By Canon 85, the churchwardens shall take care that all things in the church be kept in such an orderly and decent sort, without dust or anything that may be either noisome or unseemly, as best

becometh the house of God, and is prescribed in an homily to that effect. See CHURCHWARDENS, *post*.

Communion Table.] The 82nd Canon appoints, that communion tables shall, from time to time, be kept and repaired in sufficient manner, at the charge of the parish. To use lighted candles on the communion table or on a ledge immediately above the same during the performance of morning prayer is unlawful. *Martin v. Mackonochie*, L. R. 4 A. & E. 279 ; 38 L. J. Ecc. 1. It is not unlawful to place vases of flowers on the holy table and keep them there during the performance of divine service, provided they are used as decorations only. The leaving of the holy table bare and uncovered during divine service is unlawful. *Elphinstone v. Purchas*, L. R. 3 A. & E. 66 ; 39 L. J. Ecc. 124. A communion table with a cross attached to it, although made of wood and movable, is contrary to the ecclesiastical law. *Liddell v. Westerton*, 5 W. R. 470. A movable cross placed on a retable or wooden ledge at the back of and immediately above the communion table, but so close to it that the communion table and the retable would, at a very short distance, bear the appearance of one entire structure, is an unlawful ornament. *Durst v. Masters*, L. R. 1 P. D. 123, 373 ; 45 L. J. P. C. 51.

A metal cross not attached to the communion table is a legal ornament, and a wooden ledge or a super-altar is not contrary to law. *Liddell v. Beale*, 14 Moore, P. C. C. 7. A baldachino or marble canopy, erected over the communion table in the parish church, is an unlawful ornament. *White v. Bowson*, L. R. 4 A. & E. 207 ; 43 L. J. Ecc. 7. A stone altar fixed in the floor, and not movable, is not a communion table, and is illegal. *Faulkner v. Litchfield*, 9 Jur. 234.

Font.] A font of stone shall be placed in every church and chapel where baptism is to be ministered, the same to be set in the usual places. *Canon* 81.

Chest for Alms.] A strong chest, with a hole in the upper part thereof, having three keys, should be provided ; of which one shall remain in the custody of the parson, vicar or curate, and the other two in the custody of the churchwardens for the time being ; which chest they shall set and fasten in the most convenient place, to the intent the parishioners may put into it their alms for their poor neighbours. And the keepers of the keys shall yearly, quarterly, or oftener, as need requireth, take such alms, &c., out of

the chest, and distribute the same, in the presence of most or of six chief parishioners, to their most poor and needy neighbours.

Chalice, Wine, &c.] A chalice, or more if necessary, should also be provided; *Lindw.* 252; a sufficient quantity of fine white bread, and of good and wholesome wine for the communion, which wine is required to be brought to the communion table in a clean and sweet standing pot or stoup of pewter, if not of purer metal. *Canon* 20. As to mixing water with the wine and the use of wafers, see *post*, LORD'S SUPPER.

Books, Bells, Bier, &c.] There should also be provided a Bible of the largest volume, and a true printed copy of the [present] Book of Common Prayer (13 & 14 Car. 2, c. 4, s. 2). And the book of homilies should also be provided in like manner; *Canon* 80; and bells and ropes, and a bier for the dead, should likewise be furnished. *Lindw.* 252. In a criminal suit promoted by the incumbent for ringing the church bells, it is not sufficient to allege that the ringing took place without the consent of the incumbent; it must have been alleged to have been against his express wish. *Daunt v. Miller*, L. R. 2 A. & E. 101.

Table of Degrees.] The table of degrees of marriage prohibited should be, in every church, publicly set up.

Ten Commandments.] The Ten Commandments should be set up on the east end of every church and chapel, where the people may best see and read the same. And the like is directed with respect to other chosen sentences. *Canon* 82. But as it is very possible that in many churches they could not easily be read or seen by the people if set up at the east end, they may be set up elsewhere in the body of the church where they may more easily be read. *Liddell v. Beale*, 14 Moore, P. C. C. 7.

Monuments in Churches.] Although it is lawful to build or erect tombs, sepulchres or monuments for the deceased, in church, chancel, chapel or churchyard, in a manner not to the hindrance of the celebration of divine service; 3 *Inst.* 202; yet this must be intended by licence of the bishop, or consent of the parson. *Degge*, Pt. 1, c. 12; *Wats.* c. 39; *Gibs.* 453. Though a well-established custom, or the authority of the rector and churchwardens, may occasionally suffice, yet no practice can absolutely legalise the erection of a monument without a faculty; *Seagar v. Bowle*, 1 Add. R. 541; for it is a general rule that they cannot be set up without the consent of the ordinary. *Palmer v. Bishop of Exeter*, 1 Stra.

576; *Cart v. Marsh*, 2 Stra. 1080. A faculty is in strictness requisite, though it be omitted under the confidence reposed in the minister. The consent of the incumbent is thus taken on some occasions, and especially for monuments in the chancel. *Maidman v. Malpas*, 1 Hagg. R. 208.

Though the ordinary is the proper judge in these cases, yet, notwithstanding his allowance, an appeal lies to the metropolitan; because the power of the ordinary in this respect must be exercised according to a prudent and legal discretion, which the superior has a right to look into and correct; *Cart v. Marsh*, 2 Stra. 1080; and the party cannot waive the appeal and apply to the Court of Queen's Bench for a *prohibition* instead. *Bulwer v. Hase*, 3 East, 217.

Repairing Monuments.] After monuments have been once erected they may be repaired, for this is of public consequence, when their importance in tracing family descents, &c., is considered. It may be proper to apply to the churchwardens for leave to do so. *Barden v. Calcott*, 1 Hagg. Rep. 16.

Images and other Things.] If any superstitious pictures are in a window of a church or aisle, it is not lawful for any to break or remove them without licence of the ordinary; and the offender may be bound to his good behaviour. *Pricket's Case*, Cro. Jac. 367; *Ritchings v. Cordingley*, L. R. 3 Ad. & Ec. 113. The ordinary has jurisdiction to find that any image or sculpture has been unlawfully erected, and to order its removal. *Phillpots v. Boyd*, L. R. 6 P. C. 435. A reredos, of which the central compartment consists of a sculptured panel representing the crucifixion, having the figure of our Saviour on the cross, and the figure of St. John and the three Maries on either side, all such figures being in high relief, is not an unlawful architectural adornment. *Hughes v. Edwards*, L. R. 2 P. D. 361; and where the whole erection of a reredos is set up for the purpose of decoration only it is lawful. *Phillpots v. Boyd*, L. R. 2 P. C. 435; 44 L. J. Ecc. 44. A crucifix of metal in full relief and about eighteen inches long, placed on the top of the screen separating the chancel from the nave, is an unlawful structure. *Clifton v. Ridsdale*, L. R. 1 P. D. 316; 2 P. D. 276; 46 L. J. P. C. 27. It seems that the set of delineations used in Roman Catholic churches, and commonly called "Stations of the Cross and Passion," are decorations forbidden by law in churches of the Church of England. *Id.* There are also many other articles for which no

express provision is made by any special law, and therefore must be referred to the general power of the churchwardens, with the consent of the parishioners, and under the direction of the ordinary; such as the erecting galleries, adding new bells (and of consequence, as it seemeth, salaries for the ringers), organs, clock-chimes, king's arms, pulpit-cloths, hearse cloth, mats, vestry furniture, and the like. 1 *Burn's Ecc. L.* 374. The consent of the parishioners is not indispensable, unless to charge the parish with any expense for new ornaments, &c., or for their support after they have been put up. Where no charge is incurred, their approbation is not necessary, nor their disapprobation binding on the ordinary. *St. John's, Margate.* 1 Hagg. R. 198; *Butterworth v. Walker*, 3 Burr. 1689.

Vestments.] The use of the chasuble, alb, and tunicle by the celebrant while officiating in the communion service is illegal. On high feast days in cathedrals and collegiate churches the cope may be worn in ministering the communion, but in all other ministrations the surplice must be used. It seems that the use of a biretta or cap as a vestment in the service of the Church is illegal. Albs with patches called apparels, tippets of a circular form, stoles, dalmatics and maniples, are unlawful ornaments, and may not be used by a minister during divine service. *Hebbert v. Purchas*, L. R. 3 P. C. 605; 41 L. J. P. C. 40; *Elphinstone v. Purchas*, L. R. 3 A. & E. 66; 39 L. J. P. C. 67.

Organs.] In cathedrals organs may be deemed necessary, and the ordinary may compel their erection by the dean and chapter. In parish churches it is otherwise, and it may be proper to discourage them in some particular cases. In one case Lord Stowell decreed a faculty for accepting and erecting an organ offered to a parish church, without a clause against future expenses being charged to the parish, which was rich and populous. *Jay v. Webber*, 3 Hagg. R. 8; *St. John's, Margate*, 1 Hagg. R. 198. See *Butterworth v. Walker*, 3 Burr. 1689. A parish will not be compelled by *mandamus* to elect an organist. *Ex parte Le Crew*, 2 Dowl. & L. 571.

Property in Goods of the Church.] A person may give or dedicate goods to the service of religion in such a church, and deliver them into the custody of the churchwardens, by which the property is immediately changed. *Degge*, Pt. 1, c. 12. The goods the church do not belong to the incumbent, but to the parish-

ioners; and if they be taken away or injured, the churchwardens have their action at common law.

Alienation of Goods, &c.] By the law of England, the goods belonging to a church may be alienated; yet the churchwardens alone cannot dispose of them without the consent of the parish; and a gift of such goods by them, without the consent of the sidesmen or vestry, is void. *Wats. c. 39; 1 Burn's Ecc. L. 377.*

SECTION VI.—REPAIRS OF THE CHURCH.

By Parishioners.] Custom, or the common law, has cast the burthen of repairing the church upon the parishioners, at least with respect to the nave of the church, and in some instances to the chancel also; but this obligation, since the passing of the Act of 1868 (c. 109), cannot be enforced. In London there is a general custom for the parishioners to repair the chancel as well as the body of the church.

Repair of Chancel.] Custom has also allotted the repair of the chancel to the parson, if there be no custom for the parish or the owner of some particular estate to do it. *Gibbs. 199.* And where there are both rector and vicar in the same church, they shall contribute in proportion to their benefice, unless there be a custom or order fixing to which of them it shall appertain. *Lindw. 253.*

As spiritual persons, so also impropriators, are bound of common right to repair the chancels. Where there are several impropriators, which is not unfrequently the case, and the prosecution is to be carried on by the churchwardens to compel them to repair, it is advisable to obtain the sanction of the vestry to prosecute at the parish expense.

Applying Endowment to Repairs.] By the 19 & 20 Vict. c. 104, s. 31, the Ecclesiastical Commissioners, with the consent of the bishop of the diocese and of the patron and incumbent of the church of any parish, may apportion any sum arising from a permanent endowment belonging to such church, and applicable to the repair and maintenance thereof, to the repair or maintenance of any church or churches situate within the original limits of such parish, anything contained in any local Act to the contrary notwithstanding.

Mode of compelling Repairs.] By the 85th Canon, the churchwardens or questmen are to take care and provide that the churches

be well and sufficiently repaired, and so from time to time kept and maintained ; and although they are not charged with the repairs of the chancel, yet they are bound to see that it be not permitted to dilapidate and fall into decay ; and if any default be made therein, they are to make presentment thereof at the next visitation. 1 *Burn's Ecc. L.* 357.

Enlarging or Rebuilding.] If it be necessary to enlarge the church for the accommodation of an increased population, or if it be necessary, from its being greatly dilapidated and out of repair, to pull down and rebuild it, the consent of the majority of the parishioners, declared at a meeting duly assembled upon proper notice, must be obtained. *Thomas v. Morris*, 1 Add. Rep. 478. It seems that if a church be rebuilt on the old lines of foundation, including within it the same originally consecrated ground and no more, the ecclesiastical law does not require that such church should be reconsecrated. *Parker v. Leach*, L. R. 1 P. C. 312.

SECTION VII.—DILAPIDATIONS.

Dilapidation is the pulling down or destroying in any manner any of the houses or buildings belonging to a spiritual living, or suffering them to run into ruin or decay, or wasting or destroying the woods of the church, or committing or suffering any wilful waste in or upon the inheritance of the church. *Degge*, 118. The law as to ecclesiastical dilapidations has been recently amended by 34 & 35 Vict. c. 43, which provides for the appointment of a surveyor of such dilapidations in each diocese. Such surveyor, when so ordered by the bishop, may inspect and report on the buildings of a benefice at other times than when a benefice is vacant. Sect. 12. The bishop can only order the surveyor to make such an inspection when he has received a complaint in writing of the archdeacon, or of the rural dean, or of the patron of a benefice, that the buildings of such benefice are in a state of dilapidation. The incumbent is bound to execute the works prescribed in the report, as settled by the bishop, in the manner and within the times therein prescribed, or within such extended time as the bishop in writing may direct. Sect. 19.

An agreement that neither party on an exchange of livings shall pay dilapidations is not illegal. *Wright v. Davies*, L. R. 1 C. P. D. 638 ; 46 L. J. C. P. D. 41. The case of *Wise v. Metcalfe*, 10

B. & C., is a leading authority to show the extent of liability for dilapidations in the case of house and buildings, and in what manner and according to what principle these dilapidations are to be calculated. The right of a rector to recover from the representatives of his predecessors damages for waste is confined to the case of dilapidations to houses and buildings, and does not extend to waste committed by digging gravel in the glebe. *Ross v. Adcock*, L. R. 3 C. P. 655.

SECTION VIII.—CHURCHYARDS.

Repair of Churchyards.] By a constitution of Archbishop Winchilsea, the parishioners shall repair the fence of the churchyard at their own charge. Lind. 253. And this they ought to do by custom known and approved, the conusance of which belonged to the Ecclesiastical Court. 2 Inst. 489. But nevertheless, if the owners of lands adjoining to the churchyard have used, time out of mind, to repair so much of the fence thereof as adjoineth to their ground, such custom is a good custom; and the churchwardens may have an action against them at the common law for the same. 2 Roll. Abr. 287; Gibs. 194. For the duty rests upon the churchwardens or questmen to take care that the churchyards be well and sufficiently repaired and fenced, as they have been in each place accustomed, at the charge of those unto whom by law the same appertaineth. Canon 85. The Ecclesiastical Commissioners may alter, repair, pull down and rebuild, or order to be altered, &c., the walls or fences of any existing churchyard or burial-ground of any parish or chapelry, and fence off any additional or new burial-ground. 59 Geo. 3, c. 134, s. 39.

Neglect to Repair indictable.] The duty of repairing the fences of churchyards may also, it appears, be enforced by indictment; as the neglect of it amounts to a misdemeanour. However, where a vicar was indicted for such non-repair, and the indictment alleged that the vicar had been immemorially bound to repair, and that the defendant had neglected to do so, by means whereof cattle broke into the churchyard and injured the tombstones, church porch, &c., to the nuisance of the parishioners, and the defendant was acquitted, the Court refused to grant a new trial on the ground of the verdict being against evidence; Lord Ellenborough observing: "It is very clear that you may indict the defendant again, if the fences have

continued out of repair since the last indictment." *R. v. Reynell*, 6 East, 315.

Trees and Herbage.] The right of property in the trees and grass of churchyards was formerly a subject of great contention; but, upon the principle that laymen have no power to dispose of things ecclesiastical, it was determined that the parishioners have no right to cut down trees or mow the grass, against the will of the rectors or vicars, or others deputed by them for the custody or care thereof, though such parishioners may even intend to apply the trees so cut down to the use of the church. And persons guilty of such contempt incur the sentence of the greater excommunication, until they make sufficient satisfaction and amends. Lind., 267. But if the defendant allege that the trees in dispute grew upon his own freehold, a prohibition lies. *Hilliard v. Jefferson*, Lord Raym. 212.

If in the same church there be both rector and vicar, "it may be doubted," says Lindwood, "to whether of them the trees or grass shall belong; but I suppose they shall belong to the rector, unless in the endowment of the vicarage they shall be otherwise assigned." Lind. 267. And Rolle seems to make the right, as between rector and vicar, to turn upon this, that they belong to him who is bound to repair; which determination agrees well with what is said in the statute, namely, that the parson shall not cut them down, but when the chancel wants reparation. *Bellamy's Case*, 2 Roll. Abr. 337; Gibs. 207.

As to the right of lay impropriator to herbage growing in churchyard, see *Greenslade v. Davey*, L. R. 3 Q. B. 421; 37 L. J. Q. B. 137.

The 35 Edw. 1, st. 2, intituled *Statutum ne Rector prosternat Arbores in Cœmeterio*, which is but a declaration of the common law (11 Rep. 49), is as follows:—"Forasmuch as a churchyard that is dedicated is the soil of a church, and whatsoever is planted belongeth to the soil, it must needs follow that those trees which be growing in the churchyard are to be reckoned amongst the goods of the church the which laymen have no authority to dispose of, but, as the Holy Scripture doth testify, the charge of them is committed only to priests to be disposed of; and yet, seeing those trees be often planted to defend the force of the wind from hurting the church, we do prohibit the parsons of the church that they do not presume to fell them down unadvisedly, but when the chancel

of the church doth want necessary reparations ; neither shall they be converted to any other use, except the body of the church doth need like repairs, in which case, the rectors of poor parishes, of their charity, shall do well to relieve the parishioners with bestowing upon them the same trees ; which we will not command to be done, but we will commend it when it is done." Gibs. 208.

Prohibition against Waste.] If the person who is entitled to cut the trees for these purposes is about to do so for any other, a prohibition will be granted to hinder waste. And if the trees be actually cut down by any person, for other use than is here specified, it is thought that he may be indicted and fined upon this statute. Gibs. 208 ; 11 Rep. 49. And in *Starchy v. Francis*, 2 Atk. 217, upon a motion for an injunction by the patron of the living to stay waste, Lord Hardwicke said : " A rector may cut down timber for the repairs of the parsonage house or the chancel, but not for any common purpose. Under the statute of 35 Edw. 1, if it is the custom of the country, he may cut down underwood for any purpose ; but if he grubs it up, it is waste. He may cut down timber likewise, for repairing any old pews that belong to the rectory ; and he is also entitled to botes for repairing barns and outhouses belonging to the parsonage." And an injunction was granted accordingly. See also 1 Bos. & Paul. 115, n. An injunction for the like purpose was also granted against the widow of a rector, during vacancy, at the suit of the patroness. *Hoskins v. Featherstone*, 2 Br. C. C. 552. And the Attorney-General may, on behalf of the Crown, as the patron of bishoprics, have the like remedy against a bishop for opening mines, or to restrain him from felling large quantities of timber ; but the patron cannot pray an account of the profits for his own benefit. *Knight v. Moseley*, Amb. 176.

Vaults, Tombs, &c.] A churchyard is the freehold of the incumbent, subject to the right of the parishioners to interment. The incumbent has a *prima facie* right to prohibit altogether the placing of any gravestone in his churchyard, subject to the control of the ordinary. Where the incumbent has refused to allow a gravestone to be erected, and application is made to the ordinary for a faculty for its erection, or where the bishop has expressed an opinion adverse to the gravestone, and his chancellor has refused a faculty, the Court of Appeal will not overrule the discretion, unless it is

clear that the discretion vested in the ordinary has been improperly exercised. *Keet v. Smith*, L. R. 4 N. & E. 398; 44 L. J. Ecc. 70. The rector has the freehold of the church for public purposes, not for his own emolument, and is able to supply places for burial from time to time, as the necessities of his parish require, but not to grant away vaults, which cannot be done unless a faculty be obtained. *Bryan v. Whistler*, 8 B. & C. 288. The grant of such a faculty is entirely within the discretion of the ordinary. *Rugg v. Kingsmill*, L. R. 2 P. C. 59. The vicar or perpetual curate of a church, though entitled to officiate and have free access to the chancel, has no right to fees for the erection of monumental tablets or the construction of vaults in the chancel. *Id.* And a party who erects a tomb in a churchyard, without due authority, may be proceeded against in the Ecclesiastical Court. *Bardin v. Calcott*, 1 Hagg. R. 14. And where a faculty is sought to be obtained for erecting a vault in a churchyard, the Court will scruple to decree it without being satisfied that the proposed erection is not likely to be generally prejudicial to the parish, even though the issuing of the faculty be unopposed, either on the part of the parish or of any particular parishioner. *Rosher v. Vicar of Northfleet*, 3 Add. R. 14.

Fees on erecting and opening Vaults, &c.] There is no general common law right to take fees for erecting a stone, or anything else, by which the grave may be protected and the memory of the person interred preserved; but where this is shown to be customary, such practice will be supported. *Bardin v. Calcott*, 1 Hagg. Rep. 14. And whether this fee, or a portion of it only, belongs to the incumbent, seems to rest upon similar authority; though it is observed, that after the soil hath been broken for interring the dead the grass will grow again, and continue beneficial to the incumbent, but after the erection of a monument there ceaseth to be any further produce of the soil in that place. And if the incumbent's leave is necessary for the erecting a monument, it seemeth that he may prescribe his own reasonable terms, unless an accustomed fee hath been paid. 1 *Burn's Ecc. L.* 273. A vicar of a parish, being freeholder of the church and churchyard, may make a special contract for the payment of a fee other than the customary burial fee (if any) for the burial of a non-parishioner in a particular vault in the parish church. *Nevill v. Brülger*, L. R. 9 Ex. 214; 43 L. J. Ex. 147.

Ownership of Tombstones.] The possession and right of property in tombstones erected in a churchyard belong not to the parson, but to those who erected them; and if any one deface or injure them, such owners may have their action of trespass against the wrong-doer. *Spooner v. Brewster*, 2 Car. & P. 14. Though if the parson remove or cause them to be damaged, in the exercise of his general authority over the whole freehold of the church, no remedy lies against him, unless the erection has been made under the sanction of a faculty. *Bryan v. Whistler*, 8 B. & C. 288.

Churchway, &c.] It is said, that a man may prescribe to have a way through the church or churchyard; 2 *Roll. Abr.* 265; but he cannot make a private door into the churchyard without the consent of the minister, and a faculty also from the bishop for the same. *Par. L. c.* 26, s. 29. The right to a churchway, if it belongs only to the inhabitants of a particular house or parish, is maintainable in the Ecclesiastical Court; but if it be common to all, a prohibition will issue to the spiritual Court, for it is triable at common law only. 2 *Roll. Abr.* 287; 1 *Vent.* 208.

By the 59 Geo. 3, c. 134, s. 39, the Ecclesiastical Commissioners may stop up and discontinue, or alter, or order to be stopped up, &c., any such entrance to any churchyard or burial-ground, and the footways and passages over the same, as to them appear useless and unnecessary, or as they think fit to alter; provided the same be done with the consent of two justices and on notice being given as prescribed by the 55 Geo. 3, c. 68 (the old Highway Act). This notice must be given before the order of the commissioners is made. *Reg. v. Arkwright*, 12 Q. B. 960.

Additional Churchyards.] Any lands adjoining any churchyard or burial-place may be conveyed for the purpose of adding thereto by a deed in the form set out in 30 & 31 Vict. c. 133, s. 5. Exclusive right of burial in a portion of the land so added to a churchyard, not exceeding one-sixth of the whole of the said land, may be secured to the giver thereof. Sect. 9. The bishop, or any person acting under his authority, has all the powers with regard to the erection of monuments and gravestones in land in which such exclusive right of burial shall have been reserved. 31 & 32 Vict. c. 47, s. 1. The bishop in consecrating lands added to existing churchyards may dispense with some of the ordinary requirements and formalities. Sect. 1.

The statutes for the erection of additional churches provide that

all such parishes or extra-parochial places as shall be required by the commissioners, shall furnish lands for enlarging existing or making additional churchyards or burial-grounds, as the commissioners shall deem necessary. 59 Geo. 3, c. 134, s. 36. By 58 Geo. 3, c. 45, s. 33, the commissioners may accept, from persons willing to give, any lands or tenements for sites, not exceeding in quantity what may be sufficient for providing a churchyard. Landlords are now empowered to convey land not exceeding one acre for a burial-place. 30 & 31 Vict. c. 50.

Grant or Purchase of Lands.] All the powers and provisions of the 58 Geo. 3, c. 45, or this Act, which relate to the grant, sale, conveyance, purchase and resale of lands or hereditaments, to or by the commissioners, for the purpose of building any additional churches or chapels, shall extend to grants, &c., of lands or hereditaments necessary for enlarging, or making any churchyard or burial-ground, and approaches thereto, under this Act. 59 Geo. 3, c. 134, s. 37. Lands added to any existing churchyard or burial-ground, or appropriated for a new burial-ground, shall, as soon as convenient, be consecrated for the burial of the dead; and shall for ever be used as an additional burial-ground; and the freehold of the land so consecrated shall thereupon vest in the person or persons in whom the freehold, the ancient burial-ground of such parish or chapelry, shall from time to time be vested. Sect. 38.

Authority to enlarge, &c.] The commissioners may authorize any parish, chapelry, township or extra-parochial place, desirous of procuring or adding to any burial-ground, to purchase any land the commissioners may think sufficient and properly situate for that purpose, whether within the parish, place, &c.; and to make and raise rates for the purchase thereof, or repaying with interest any money borrowed for making such purchase; and the churchwardens, or persons authorized to make rates, are to exercise all the powers of the said Acts for making such purchases, and making and raising such rates; and when any land so purchased is situate out of the parish or place for which it is intended, the same, after consecration, to be deemed part of such parish or place. 3 Geo. 4, c. 72, s. 26. See 8 & 9 Vict. c. 70, s. 14. By 1 & 2 Will. 4, c. 38, s. 17, after five years from the conveyance of any lands, &c., as a site for any church or chapel, or any church or chapel yard or cemetery, under that Act, they shall be absolutely vested in the persons to

whom they are conveyed ; provided, that if recovered in ejectment, they tender the value found by the jury and costs within two months after the judgment.

Closing Churchyards, &c.] The great inconvenience arising from the interment of the dead in the existing churchyards of the metropolis and other populous places has been remedied by the 15 & 16 Vict. c. 85 (repealing a former Act, 13 & 14 Vict. c. 85), the provisions of which are confined to the metropolis, but are extended to other places by the 16 & 17 Vict. c. 134, and are further amended by the 18 & 19 Vict. c. 128.

Order in Council.] On the representation of a Secretary of State, that, for the protection of the public health, burials in any part or parts of the metropolis, or in any burial-grounds or places of burial in the metropolis, should be wholly discontinued, or discontinued subject to any exception or qualification, the Queen in Council may order that, after a time mentioned in the order, burials in such parts, &c., of the metropolis, or in such burial-grounds, &c., shall be discontinued either wholly or subject to exception or qualifications to be specified. Notice of the representation, and of the time when it is to be taken into consideration, is to be fixed on the churches and chapels of the parishes to be affected. Ten days' notice of a representation to be made in relation to the burial-ground of a parish to be given to the incumbent and vestry clerk. 15 & 16 Vict. c. 85, s. 2.

The 16 & 17 Vict. c. 134, s. 1, gives a like power to the Queen to order that no new burial-ground shall be opened in any city or town, or within any other limits, without the previous approval of a Secretary of State, or that, after a time mentioned in the order, burials in any city or town, or within any other limits, or in any burial-grounds or places of burial, shall be discontinued wholly, or subject to exceptions or qualifications.

The 18 & 19 Vict. c. 128, s. 1, enables the Queen in Council to postpone the time appointed by any order for the discontinuance of burials, or otherwise to vary any order made under these Acts, whether the time thereby appointed for the discontinuance of burials has or has not arrived.

Burials prohibited after Order—Penalty.] It shall not be lawful, after the time mentioned in any order for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere within the parts to which the order ex-

tends, or in the burial-grounds or places of burial (as the case may be) in which burials have by such order been ordered to be discontinued, except as in the Act is excepted; and any person, after such time, burying or assisting in the burial of any body contrary to this enactment is made guilty of a misdemeanour. 15 & 16 Vict. c. 85, s. 4; 16 & 17 Vict. c. 134, s. 3. A penalty not exceeding 10*l.*, recoverable summarily before two justices of the peace, is imposed upon any person knowingly and wilfully burying or assisting in such burial, by the 18 & 19 Vict. c. 128, s. 2.

After the time from which burials in any place of burial in a metropolitan parish are required to be discontinued, the body of any parishioner or inhabitant of such parish shall not be buried in any burial-ground within the metropolis belonging to any other metropolitan parish, save where the body of any of the family or relatives of such person has been there interred, and the relatives or persons having the care and direction of the funeral signify a desire that on that account the body of such person should be there interred, such burial-ground not being one in which burials have been ordered to be discontinued. The keeper of such burial-ground knowingly authorizing or permitting such burial there is guilty of a misdemeanour. 15 & 16 Vict. c. 85, s. 5.

“Parish” means every place having separate overseers of the poor, and separately maintaining its own poor. 15 & 16 Vict. c. 85, s. 52.

Not to extend to Quakers or Jews, or Private Burial-Grounds.] No such Order in Council is to extend to any burial-ground of Quakers or Jews, used solely for the burial of such people or persons, unless the same be expressly mentioned in the order; and nothing in the Act is to prevent the burial in any such burial-ground in which interment is not required to be discontinued of the bodies of such people or persons. And no such Order in Council is to extend to any non-parochial burial-ground being the property of a private person, unless it be expressly mentioned in the order. 15 & 16 Vict. c. 85, s. 3; 16 & 17 Vict. c. 134, s. 2.

Burying in Vaults preserved.] Where, under any faculty legally granted, or by usage or otherwise, there is at the time of the passing of the Act any right of interment in or under any church or chapel affected by an order, or in a vault of such church or chapel, or of any churchyard or burial-ground affected by such order, and

where any exclusive right of interment has been purchased or acquired before the passing of the Act, a Secretary of State may, on application being made to him, and being satisfied that the exercise of such right will not be injurious to health, grant a licence for its exercise during such time and subject to such conditions and restrictions as he thinks fit; but such licence is not to prejudice or affect the authority of the ordinary, or of any other person who, if the Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been acquired, nor otherwise give to such right any greater force or effect than it would have had if the Act had not passed. 15 & 16 Vict. c. 85, s. 6; 16 & 17 Vict. c. 134, s. 4.

Exception of Cemeteries.] The provisions of the 15 & 16 Vict. c. 85, are not to extend to authorize the discontinuance of burials, or to prevent burials in any of the cemeteries mentioned in the schedule to the Act (which are all established under local Acts in the neighbourhood of the metropolis), or in any burial-ground or cemetery to be thereafter provided with the approval of a Secretary of State. Sect. 7.

There is a similar exception in the 16 & 17 Vict. c. 134, as to any cemetery established under the authority of an Act of Parliament. Sect. 5. This clause applies only to cemeteries established by companies authorized by Act of Parliament, and not to burial-grounds annexed to district churches erected under the Church Building Acts. *Reg. v. JJ. Manchester*, 5 E. & B. 702; 25 L. J. M. C. 45.

Closed Churchyard.] A faculty has been granted for the erection of an infant school for promoting the education of the poor, in pursuance of the Elementary Education Act, 1870, in a closed churchyard. *Re Bettinson*, L. R. 4 A. & E. 294.

A faculty has also been granted to sanction the appropriation of a portion of a churchyard which has been closed for burial under an Order in Council for the purpose of a public garden, and for authorizing the construction of footpaths and the erection of gates. *Hansard v. Parishioners of St. Matthew, Bethnal Green*, L. R. 4 P. D. 46.

Mortuary.] Any local authority may, and if required by the Local Government Board must, provide a mortuary and make bye-laws with respect to the management and charges for use of the same; they may also provide for the decent and economical inter-

ment, at charges to be fixed by such bye-laws, of any dead body which may be received into a mortuary. 38 & 39 Vict. c. 55, s. 141. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house is retained in such house, a magistrate may order its removal to a mortuary. Sect. 142. Any local authority may provide places for *post-mortem* examinations. Sect. 143. See also 15 & 16 Vict. c. 85, and 18 & 19 Vict. c. 128. As to providing mortuaries in the metropolis, 29 & 30 Vict. c. 90, ss. 27, 28.

In a recent case, the Court being of opinion that it was requisite for the health of the parish that a mortuary should be provided, and also that the churchyard was the most suitable site for its erection, decided that it had jurisdiction to grant a faculty for the erection of a mortuary on a portion of the churchyard, with a room to be appropriated to *post-mortem* examinations. *Hansard v. The Parishioners of St. Matthew, Bethnal Green*, L. R. 4 P. D. 46. The Court has granted a faculty for a like purpose in a consecrated burial-ground which had been closed for burials by Order in Council. *Rector of St. George's, Hanover Square, v. Hall*, L. R. 5 P. D. 42. A faculty for the erection of rooms for the holding of coroners' inquests, and living rooms for the keeper of the mortuary was refused. *Hansard v. Bethnal Green*, L. R. 4 P. D. 46.

Cemeteries.] By 42 & 43 Vict. c. 31, a local authority is authorized to acquire, construct, and maintain a cemetery, either wholly or partly, within or without their district, subject, as to works without their district for the purpose of a cemetery, to the provisions of the Public Health Act, 1875; as to sewage works, by a local authority without their district; also to accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The Local Government Board issued a circular, dated August 19, 1879, to the sanitary authorities, which deals very fully with the powers and duties created by the Act. It is set out in the Appendix to the 14th edition of *Prideaux's Churchwardens' Guide*.

New Burial-Grounds.] The churchwardens or other persons to whom it belongs to convene meetings of the vestry of the parish, upon the requisition in writing of ten or more ratepayers of any

parish in which the places of burial appear to such ratepayers insufficient or dangerous to health (whether any Order in Council in relation to such parish has or has not been made), (or at their own discretion, without requisition, in any parish in which no burial board has been appointed—18 & 19 Vict. c. 128, s. 3), are to convene a meeting of the vestry for the special purpose of determining whether a burial-ground shall be provided for the parish. Notice of the vestry, and of the place and hour of holding it, and the special purpose thereof, to be given in the usual manner seven days at least before holding it: if it be resolved by the vestry to provide a new burial-ground, a copy of the resolution, signed by the chairman, is to be sent to the Secretary of State. 15 & 16 Vict. c. 85, s. 10. The resolutions of the vestries are not to be void by reason of the irregularity of the notices. 20 & 21 Vict. c. 81, s. 27.

Burial Board to be appointed.] In case of such resolution as aforesaid, the vestry are to appoint a burial board, consisting of not less than three nor more than nine ratepayers of the parish, one-third of whom go out of office yearly at a time fixed by the vestry, but are re-eligible. The incumbent is eligible, though not a ratepayer. 15 & 16 Vict. c. 85, s. 11.

Vacancies in the burial board are to be immediately notified to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and the vestry are to fill them up within a month; if they neglect to do so, the burial board may appoint a ratepayer to supply the vacancy. 18 & 19 Vict. c. 128, s. 4. If a vacancy occurs, the vestry may fill it up after the month, the burial board not having done so. *Reg. v. Overseers of South Wales*, 33 L. J. M. C. 193.

A Local Board of Health or Improvement Commissioners may, by Order in Council, be constituted a burial board. 20 & 21 Vict. c. 81, s. 4. When a vestry of any parish comprised in a local Government district resolves to appoint a burial board, the local board may, at the option of vestry, be burial board for such parish. 38 & 39 Vict. c. 55, s. 343.

When the district of a burial board is included in or co-terminous with the district of an urban authority, the burial board may, by resolution of the vestry and by agreement of the burial board and urban authority, transfer their powers to the urban authority. 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. 3.

In Boroughs.] By the 17 & 18 Vict. c. 87, s. 1, upon the petition of the council of any borough, stating that an Order in Council has been made for closing all or any of the burial-grounds in one or more parishes, being wholly or partly within such borough, and that there is difficulty or inconvenience under the 16 & 17 Vict. c. 134, of providing requisite places of burial for the inhabitants of such parishes, the Queen may, by Order in Council, direct that the powers for providing such places of burial shall be vested in the town council. Notice of the petition, and of the time when it will be taken into consideration, is to be published in the *London Gazette*, and a newspaper usually circulating in the borough, a month before the petition is considered.

Upon making such order, if the town council decide on providing burial-grounds, they are to be a burial board for the purpose, and the provisions of the former Acts are to be applicable to the town council, except that no approval, &c., of the vestry is to be requisite. Sect. 2. Powers are given to the town council to raise the necessary funds.

Where after 1875 a district or part of a district under the jurisdiction of improvement commissioners or of a local board is constituted or included in a borough, all the powers, obligations, and property exercisable by, attaching to, or vested in such improvement commissioners or local board under the Public Health Act, 1875, or other Act, are to pass to and be exercisable by and vested in the council of such borough. 38 & 39 Vict. c. 55, s. 310. The transfer of the powers of any local board or improvement commissioners to an urban sanitary authority includes all the powers vested in a burial board by any general Act of Parliament. *Id.*

Burial Boards for United Parishes.] The vestries of any parishes, which have resolved to provide burial-grounds under the Act, may concur in providing one burial-ground for the common use of such parishes in such manner, not inconsistent with the Act, as they agree, and may agree as to the proportions in which the expenses shall be borne by the several parishes; and, according and subject to such terms, the several burial boards are to act as a joint board for all the parishes, and to have a joint office, clerks and officers. 15 & 16 Vict. c. 85, s. 23.

Where two or more parishes or places have been united for all or any ecclesiastical purposes, or have heretofore had a church or burial-ground for their joint use, or where the inhabitants of several

parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes, &c., the vestry, or any meeting in the nature of a vestry, of such several parishes, &c. (whether any one or more of such parishes, &c., do or do not separately maintain its own poor), may appoint a burial board, and supply vacancies therein, and exercise all the powers given to the vestry of a parish, &c.; and the burial board so appointed is to have all the powers for providing a burial-ground for the common use of the said parishes, &c., and the expenses are to be borne by such parishes in proportion to the value of the property therein, as rated to the poor, and to be paid out of the poor rates. 18 & 19 Vict. c. 128, s. 11.

Where any of the parishes or places under the circumstances provided for in section 11 separately maintains its own poor, or has a separate burial-ground, the vestry of such several parishes cannot appoint a burial board without the sanction of the Secretary of State. 20 & 21 Vict. c. 81, s. 9.

Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it is not lawful for the vestry of such entire parish or place to appoint a burial board without the consent of the Secretary of State. 23 & 24 Vict. c. 65, s. 4.

Where such consent is required the vestry cannot appoint such board until a resolution of the vestry declaring the expediency of such appointment has been passed, and notice thereof sent to the Secretary of State, and the same has been approved of by him, and approval of such resolution is to be deemed to be approval of the appointment of the board. 34 & 35 Vict. c. 33, s. 1.

The approval of a majority of the vestries of parishes is sufficient for acts done by burial boards acting for more than two parishes. 20 & 21 Vict. c. 81, s. 1. Joint burial boards may be dissolved. Sect. 2.

Burial Boards in Places not maintaining their own Poor.]
The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial-ground, may appoint a burial board and exercise all the powers given to the vestry of a parish separately maintaining its own poor. 18 & 19 Vict. c. 128, s. 12.

Where any district not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or union maintaining the poor of the places comprised therein by means of a common rate, shall have a burial board, or forms part of a place or union of places not co-extensive with the area rated to the relief of the poor, and having one burial board, the expenses of such burial board, or, where such district forms part only of the area of the burial board, the portion of the expenses to be borne by the district, are to be paid by the overseers or other persons authorized to make and collect such common rate, according to the directions and under a certificate of the burial board. *Ibid.* Sect. 13.

A burial board may be established for a district not maintaining its own poor, and which has had no separate burial-ground. 20 & 21 Vict. c. 81, s. 5.

Burial-ground to be provided.] The burial board is with all convenient speed to proceed to provide a burial-ground within or without the parish or parishes for which they act, and to make arrangements for facilitating interments therein, reference being made to the convenience of access thereto from the parish or parishes for which it is provided. 15 & 16 Vict. c. 85, s. 25.

No ground (not already used or appropriated as a cemetery) is to be used for burials within 100 yards of any dwelling-house without the consent in writing of the owner, lessee and occupier of such dwelling-house. 18 & 19 Vict. c. 128, s. 9. *Lord Cowley v. Byas*, L. R. 5 Ch. D. 944.

The burial board may, with the consent of the vestry, contract for and purchase lands for a burial-ground or for additions thereto, or they may purchase from companies or persons entitled thereto any cemeteries or parts thereof, subject to the rights in graves and vaults and other subsisting rights previously granted therein; or they may, in lieu of providing a burial-ground, contract with such companies or persons for the interment in such cemeteries, either in any allotted part thereof or otherwise, of the bodies of persons who would have had rights of interment in the burial-grounds of the parish. 15 & 16 Vict. c. 85, s. 26. Burial boards may provide more than one burial-ground. 20 & 21 Vict. c. 81, s. 3.

Burial-ground to be consecrated.] Sect. 30 enables the burial board to lay out the burial-ground in a proper manner, and to build a chapel thereon; and the burial-ground may be

consecrated when it appears to the bishop of the diocese in a fit and proper condition for interment according to the rites of the Church.

In all cases in which a new burial-ground is provided it shall be divided into consecrated and unconsecrated parts in such proportions, and the unconsecrated part shall be allotted in such manner and in such portions, as sanctioned by a Secretary of State ; and when a burial board builds on any burial-ground a chapel for the performance of the burial service according to the rites of the Church, they are also to build on the unconsecrated part chapel accommodation for the performance of burial service by persons not being members of the Church. 16 & 17 Vict. c. 134, s. 7.

Upon a representation of a majority of the vestry of a parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of the burial-ground is undesirable or unnecessary, the Secretary of State may relieve the burial board from the obligation to build the same. The Secretary of State is not to signify such opinion unless it is shown to his satisfaction that notice of the intention to propose to the vestry to make such representation was given in manner required by law. 18 & 19 Vict. c. 128, s. 14.

Where the burial-grounds provided for two separate parishes adjoin each other, the respective burial boards may concur in building either on one of the said burial-grounds, or partly on one and partly on the other, such chapels as are authorised to be built by these Acts ; such chapels to be used in common by both parishes and to be the chapels belonging to each of such burial-grounds, in such manner, consistently with the Acts, as the boards mutually agree upon. The said boards may agree as to the proportion in which the expenses of erecting such chapels shall be borne by each of them. A board, having provided a burial-ground on which chapels have been built, may contract with another board whose burial-ground adjoins for the use of such chapels. 18 & 19 Vict. c. 128, s. 16. No wall or fence is necessary between the consecrated and unconsecrated portions of the burial-ground, but boundary marks must be provided. 20 & 21 Vict. c. 81, s. 11.

If the vestry duly convened in pursuance of public notice given in that behalf *unanimously* resolve that the new burial-ground shall be held and used in like manner and subject to the same laws and regulations as the existing burial-ground or churchyard of the

parish, the land for the new burial-ground is to be conveyed and settled in accordance with such resolution, and in such case no part need be set apart as unconsecrated. But the vestry may within ten years thereafter determine that an unconsecrated burial-ground shall be also provided for the parish, in which case it is to be provided according to the provisions of the Act 18 & 19 Vict. c. 128, s. 10.

New Burial-ground to be Burial-ground of the Parish.] From and after the consecration of any burial-ground provided under the Acts (except any portion not intended to be consecrated), or where the ground has been already consecrated, after such time as the bishop of the diocese shall appoint, such burial-ground is to be deemed the burial-ground for the parish or united parishes for which it is provided; and the incumbent or minister and the clerk and sexton thereof are to perform the same duties and have the same rights and authorities for the performance of religious service in the burial there of the remains of parishioners, &c., and shall be entitled to receive the same fees, as they previously performed, had and received; and the parishioners, &c., are to have the same rights of sepulture therein as they had in the burial-grounds of their respective parishes. 15 & 16 Vict. c. 85, s. 32.

It is the intention of 15 & 16 Vict. c. 85, that the burials of parishioners in the consecrated part of the new burial-ground established under that Act shall be conducted with the same ceremonies and in the same manner as in the old parish burying-ground; and the effect of the 30th and 32nd sections, taken together, is to make the chapel erected in the consecrated part of the new burial-ground a substitute for the parish church for the purposes of such burial. *Rochester v. Thompson*, L. R. 6 C. P. 445.

The general management, regulation, and control of the burial-grounds provided under the Act is vested in the respective burial boards providing the same. Any question touching the fitness of a monumental inscription placed in the consecrated part of the ground is to be determined by the bishop of the diocese. 15 & 16 Vict. c. 85, s. 38. Any urban authority constituted a burial board may pass bye-laws for the preservation and regulation of the burial-ground. 38 & 39 Vict. c. 55, s. 343; *Ashby v. Harris*, L. R. 3 C. P. 523. Where a burial board had granted the right and privilege of constructing a private grave in their cemetery, and the exclusive right of burial and interment therein to be held in

perpetuity for the purpose of burial, and of erecting and placing therein a monument or stone, it was held that it was not competent to the board, by a regulation subsequently made by them for the management of the cemetery, to deprive the grantee of the right of planting and ornamenting the grave. *Ashby v. Harris*, L. R. 3 C. P. 523 ; 37 L. J. M. C. 164.

New Burial-grounds not to be opened without Approval of Secretary of State.] No new burial-ground or cemetery (parochial or non-parochial) is to be provided or used in the metropolis, or within two miles of any part thereof, without the previous approval of a Secretary of State. 15 & 16 Vict. c. 85, s. 9.

A similar provision is made wherever an order has been made that no new burial-ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of a Secretary of State. 16 & 17 Vict. c. 134, s. 6.

Closed Burial-grounds to be maintained.] Wherever an Order in Council has been issued for the discontinuance of burials in any churchyard or burial-ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard and burial-ground in decent order, and do all necessary repairs to the walls and fences thereof ; the cost to be repaid by the overseers upon the certificate of the burial board or churchwardens, as the case may be, out of the poor rate for the parish or place in which such churchyard or burial-ground is situate, unless there be some other fund legally chargeable with such costs and expenses. 18 & 19 Vict. c. 128, s. 18. The provision only applies to a parish burial-ground. *Reg. v. Westgate*, 31 L. J. Q. B. 15. Any urban authority constituted a burial board may repair and uphold the fences surrounding any burial-ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and from time to time shall take the necessary steps for preventing the desecration of such burial-ground, and placing it in a proper sanitary condition, and pass bye-laws for the preservation and regulation of the burial-grounds, and the expense of carrying out such works may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board. 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. 3. As to erecting buildings in a closed burial-ground, and laying out the same as a garden, see *ante*, p. 44.

Expenses of Burial Boards.] The expenses incurred by any

burial board in carrying the Act into execution are to be paid out of the poor rates of the parish ; the expenses incurred in providing and laying out the burial-ground and building chapels not to exceed such sum as the vestry authorise. 15 & 16 Vict. c. 85, s. 19. If the vestry refuse or neglect to authorise the expenditure of such sums as the burial board declare to be necessary for these purposes, the Secretary of State may in certain cases authorise the expenditure. 18 & 19 Vict. c. 128, s. 6. The expenses of a local board constituted a burial board may be paid out of the general district rate, or by a separate rate. 23 & 24 Vict. c. 64, s. 1. The expenses of improvement commissioners when acting as a burial board may be paid out of the improvement rate, or by a separate rate. Sect. 2. Improvement commissioners acting as burial boards may mortgage certain rates for the purposes of the Burial Acts. 25 & 26 Vict. c. 100.

Sections 20 and 21 of the 15 & 16 Vict. c. 85, empower the burial board to borrow money. The money raised and the income arising from the burial-ground (except the fees specifically appropriated by the Act) are to be applied towards defraying the expenses, and the surplus to be paid to the overseers in aid of the poor rate. Sect. 22.

Burial boards may borrow money on mortgage. 20 & 21 Vict. c. 81, s. 19 ; or on terminable annuities, s. 21 ; and the councils of boroughs may make a separate burial rate. 20 & 21 Vict. c. 81, s. 22.

Fees.] The burial board may (without prejudice to the fees and payments in the Act specially provided for) fix and settle the fees and payments in respect of interments in any burial-ground provided by them ; and also the sums payable for exclusive rights of burial either in perpetuity or for a limited period therein, or for the right of constructing a vault with such exclusive right of burial, or of erecting monuments, &c. A table of such fees is to be printed and published, and affixed at all times in some conspicuous part of the burial-ground. 15 & 16 Vict. c. 85, s. 34. These fees are to be subject to the approval of the Secretary of State, without which they are not to be altered or varied. 18 & 19 Vict. c. 128, s. 7.

Where at the time of the discontinuance of interments in any burial-ground the burial fees are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent is to have the same proportion of

the fees for burials in the new ground as he was entitled to for burials in the old ground. 15 & 16 Vict. c. 85, s. 35.

Where, by a private Act establishing a cemetery company, it was enacted that upon the interment of every person within the cemetery the company should pay to the incumbent for the time being of the church or chapel of the parish, or other ecclesiastical division of the parish, from which such person should be removed for the purpose of interment, certain fees, and since the passing of the Act certain ecclesiastical districts have been carved out of the original parish, such fees for the interment of persons dying within such ecclesiastical districts are payable not to the incumbent of the original parish, but to the incumbents of such districts. *Vaughan v. South Metropolitan Cemetery Co.*, 1 J. & H. 256 ; 30 L. J. Ch. 265 ; *Bowyer v. Stantial*, L. R. 3 Ex. D. 315.

Fees for burials or for monuments, &c., by law or custom payable to the churchwardens, or to trustees or other persons for payment of an annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, are to continue to be paid by the burial board to the persons entitled to receive the same ; and if such fees have been received for the purpose of discharging any periodical payment or other liability, the burial board, on the request of the churchwardens, &c., are to pay out of the fees received by them on account of the parish the amount necessary to discharge such periodical payment or liability. *Ibid.* Sect. 36.

The vestry, with the consent of the bishop of the diocese, may revise and vary the fees payable under the Act to the incumbent, clerk, sexton, and other persons and bodies, or substitute a fixed annual sum to be paid by periodical payments, in which case the fees are to be received by the burial board, who are to make the fixed payments. *Ibid.* Sect. 37. The fees for any service done, or right granted in unconsecrated portion of burial-ground, are to be identical in amount as in consecrated ground, less any portion of such fees which may be received for or on account of any incumbent, churchwarden, clerk, or sexton. 20 & 21 Vict. c. 81, s. 17.

When a burial-ground is provided for two or more parishes in common, and any question arises between the incumbents as to the performance of the burial service by a chaplain to be paid by contributions from them, or deductions from fees or sums payable to

them, or otherwise touching the performance of service in the consecrated part of the ground, the bishop is to confirm any arrangement which a majority, or, in case of equal numbers, half of the incumbents approve, and such arrangement so confirmed is to be binding on all parties concerned. *Ibid.* Sect. 39.

Where under a local Act the burial fees in a metropolitan parish are payable to the churchwardens, or to trustees or others, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees payable under this Act or any Act relating to a cemetery company to such incumbent or minister are to be paid to the said churchwardens, &c., and any surplus remaining in their hands, after paying such annuity or stipend, is to be paid to such incumbent or minister. *Ibid.* Sect. 50.

An incumbent of a church or ecclesiastical district, to sustain his right to perform the burial service and receive the fees for interment in a cemetery established under the Burial Acts, must show that the inhabitants of the parish or district from which the person dying came had a right to be interred in the churchyard or burial-ground of the parish or district, and that he would have had a right to the fees had the person dying been interred there. In a divided district, neither the vicar of the parish nor the incumbents of the churches can claim the fees paid for the burials in a cemetery formed within the district, as none of them collectively or individually fill the character of incumbent within the meaning of the Burial Acts. *Hornby v. Burial Board of Toxteth Park*, 31 L. J. C. 643.

Fees on Pauper Burials.] When a body is buried in any of the cemeteries mentioned in the schedule to the 15 & 16 Vict. c. 85, at the expense of a union or parish, the fee payable to the incumbent of the parish or ecclesiastical district from which such body is removed for interment is not to exceed 1s., or where such incumbent at the time of the Act passing received in respect of a like burial in the ground of his parish more than 1s., is not to exceed the sum so received, and is in no case to exceed 2s. 6d., and no other fee or sum whatever is to be payable in respect of such interment. *Ibid.* Sect. 29. As to who is liable to pay the costs of pauper burials, see *post*, p. 57.

SECTION IX.—BURIAL.

Right of Burial.] The common law hath given the privilege of granting permission to bury in the church to the parson only. Accordingly, by a resolution in the case of *Frances v. Ley*, Cro. Jac. 367, neither the ordinary himself nor the churchwardens can grant licence of burying to any within the church, but the parson only, which right belongs to him in his general capacity of incumbent, and as the person whom the ecclesiastical laws have appointed the judge of the fitness or unfitness of this or that person to have this favour; because, when the burying in churches came to be allowed, the Canon law directed that none but persons of extraordinary merit should be buried there, of which merit the incumbent was in reason the most proper judge, and was accordingly so constituted by the laws of the Church. *Gibs.* 453; *Wats.* c. 39. But he can only grant leave for the particular burial about to take place, and cannot confer a general right to bury in a particular place. *Bryan v. Whistler*, 8 B. & C. 293. But the common law has one exception to this necessity of the leave of the parson: namely, where a burying-place within the church is prescribed for, as belonging to a manor-house; the freehold of which is in the owner of that house, and, by consequence, he hath a good action at law, if he is hindered to bury there. *Gibs.* 453; *Harvey's Case*, cited in *Dawney v. Dee*, Cro. Jac. 606. No vault or grave is to be constructed or made within the walls of or underneath any church or other place of worship, built in any urban district after August, 1848. 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. 3.

In Churchyards.] The custom of praying for the dead seems to have been the true original of churchyards, as encompassing or adjoining to the church. Which being laid out, and enclosed for the common burial-places of the respective parishioners, every parishioner hath, and always had, a right to be buried in them. *Gibs.* 453. But a custom that every parishioner has a right to bury his dead relations in the churchyard, as near their ancestors as possible, is bad. *Fryer v. Johnson*, 2 Wils. 28. Though, where the mode of burial is not in question, the Queen's Bench Division will grant a *mandamus* to compel the clergyman to inter the body of a parishioner, if he should refuse. *Reg. v. Coleridge*, 2 B. & Ald. 806; 1 Chitt. Rep. 588. And an information

was granted against a clergyman in one instance for a similar neglect. *Reg. v. Taylor*, Willes, 538. A *mandamus* will not be granted ordering the rector to bury a corpse in a particular part of the churchyard; he has a right to exercise a discretion on that subject. *Ex parte Blackmore*, 1 B. & Ad. 122. The Compulsory Church Rate Abolition Act provides that nothing in that Act contained shall affect any right of burial to which the inhabitants of the district may be entitled in the churchyard of the mother church. 31 & 32 Vict. c. 109, s. 6.

Non-parishioners.] It seems that a person is not absolutely entitled, as of common right, to be buried in the churchyard of another parish. In the case of the *Churchwardens of Harrow-on-the-Hill*, Perkins, 1740, an admonition was given to the churchwardens not to suffer strangers to be buried in their churchyard; but they, or the parishioners whose parochial right of burial is invaded thereby, may give permission for the purpose, though it should be sparingly granted; *Bordin v. Calcott*, 1 Hagg. Rep. 17; and the sanction of the incumbent whose soil is broken may be necessary. See 1 *Burn's Ecc. L.* 258. But where a parishioner dies at a considerable distance from his own parish, being absent on a journey or otherwise, the obvious expediency of interment where the death happens may supersede this right of exclusion. *Ibid.*

Burial of Bodies cast on Shore.] The 48 Geo. 3, c. 75, s. 1, enacts, that the churchwardens and overseers in any parish in which any dead human body is cast on shore from the sea shall, upon notice thereof given to them, cause such body to be conveyed to some convenient place, and with all speed cause it to be interred, with the customary duties, in the parish churchyard or burial-ground of such parish, so that the expenses thereof, and fees, &c., do not exceed the sum allowed by such parish for the burial of persons buried at the expense of the parish.

Duty to Bury.] Every person dying in this country, and not within certain ecclesiastical prohibitions, is entitled to Christian burial; and every householder in whose house a corpse lies is by the common law bound to have it decently buried. *Reg. v. Stewart*, 12 A. & E. 773.

Burial of Paupers.] The guardians, or, where there are no guardians, the overseers of the poor, may bury the body of any poor person which may be within their parish or union, and charge

the expenses to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise, in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial-ground of the parish to which such person has been chargeable (which they are hereby authorised to do), every dead body which the guardians or any of their officers duly authorised shall direct to be buried at the expense of the poor rates, shall (unless the deceased person, or the husband or wife, or next of kin of such deceased person have otherwise desired) be buried in the churchyard or other consecrated burial-ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred. 7 & 8 Vict. c. 101, s. 31. For this purpose, the workhouse of the union and district school are to be considered as situate in the parish to which the poor person dying there was chargeable. Sect. 56. For the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse is to be considered as situate in the parish in the union where such poor person resided last, previously to his removal to the workhouse. 28 & 29 Vict. c. 79, s. 10. When a union is comprised in any school or other district, the death of any pauper in the school or asylum of such district shall, for the purposes of burial, be deemed to have taken place in the parish of the union from which such pauper was sent to the said school or asylum, or to the workhouse of the union, as the case may be, and the charges of the burial shall be borne by the common fund of such union. 39 & 40 Vict. c. 61, s. 21.

By the 13 & 14 Vict. c. 101, s. 2, the guardians of a union or parish may contribute out of the common fund of the union, or out of the poor rates, such sum as the Poor Law Board approves, towards the enlargement of any churchyard or consecrated public burial-ground in the parish wherein the workhouse is situate, or in any other parish of the union, or towards obtaining any such consecrated public burial-ground; and where any such burial-ground has been enlarged or obtained with the aid of such contributions, they may bury therein any poor persons dying in the workhouse. But this is not to affect the obligation to bury elsewhere in case the deceased or his relatives, &c., so request. The fees are to be

paid by the guardians for such burials, and charged in the same manner as the relief to the deceased was last chargeable.

By the 18 & 19 Vict. c. 79, where the burial of a pauper cannot take place in the parish where, according to the provisions of the above Act, it would have been required to take place, by reason of the burial-ground of such parish being closed and no other having been provided, or where, in consequence of the crowded state of such burial-ground, the guardians or overseers are of opinion that the burial therein would be improper, they may bury such body in a public burial-ground, some part of which is consecrated, of or in some other parish, as near as conveniently may be to the parish in which the burial would otherwise have taken place. The burial fees payable by custom or Act of Parliament in the place where such burial takes place are to be paid by the guardians or overseers to the person entitled to receive them. Section 2 gives power to guardians or overseers to make agreements with cemetery companies or burial boards for the burial of any paupers whom they may undertake to bury, or towards whose burial they may render assistance; and thereupon the burial of such body by the guardians or overseers in such cemetery, or in the burial-ground of such burial board, shall be lawful, unless the deceased, or the husband or wife, or next of kin of the deceased, have otherwise expressly desired. Such agreements are not to be valid unless made in such form and with such stipulations as the Local Government Board approves. See, as to the fees in such cases, *ante*, p. 55.

Where the guardians of any parish or union are or become possessed of any land suitable to the purposes of a burial-ground, and the Local Government Board consent to the same being appropriated to the reception of the dead bodies of any poor persons, whom such guardians are required by law to bury, it is lawful for the ordinary, if he sees fit, to consecrate such land for burial purposes. 20 & 21 Vict. c. 81, s. 6.

Burial in Churchyards without the Rites of the Church of England.] Before the passing of the Burial Laws Amendment Act, 1880, no deceased persons (with certain exceptions specified in the Rubric) could be buried in consecrated ground without the service of the Church of England being read over their remains. Now 43 & 44 Vict. c. 41, provides that any relative, friend, or legal representative having the charge of or being responsible for the burial of a deceased person may give forty-eight hours' notice in writing,

I _____, of _____, being the relative [*or friend, or legal representative, as the case may be, describing the relation of a relative,*] having the charge of or being responsible for the burial of *A. B.*, of _____, who died at _____, in the parish of _____, on the _____ day of _____ do hereby give you notice that it is intended by me that the body of the said *A. B.* shall be buried within the [*here describe the churchyard or graveyard in which the body is to be buried,*] on the _____ day of _____, at the hour of _____, without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the "Burial Laws Amendment Act, 1880."

To the Rector [*or, as the case may be,*] of _____.

The word "graveyard" in the Act includes any burial-ground or cemetery vested in any burial board, or provided under any Act relating to the burial of the dead, in which the parishioners or inhabitants of any parish or ecclesiastical district have rights of burial; and in the case of any such burial-ground or cemetery, if a chaplain is appointed to perform the burial service of the Church of England therein, notice under the Act shall be addressed to such chaplain, but the same shall be given to or left at the office of the clerk of the burial board, if any, in whom any such burial-ground or cemetery may be vested: Provided also, that it shall be lawful

for the proprietors or directors of any proprietary cemetery or burial-ground to make such bye-laws or regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of this Act, any enactment to the contrary notwithstanding. Sect. 1.

Such notice, in the case of any poor person deceased, whom the guardians of any parish or union are required or authorised by law to bury, may be given to the rector, vicar, or other incumbent in manner aforesaid, and also to the master of any workhouse in which such poor person may have died, or otherwise to the said guardians, by the husband, wife, or next of kin of such poor person, who, for the purposes of this Act, shall be deemed to be the person having the charge of the burial of such deceased poor person; and in any such case it shall be the duty of the said guardians to permit the body of such deceased person to be buried in the manner provided by this Act. Sect. 2.

Such notice shall state the day and hour when such burial is proposed to take place, and in case the time so stated be inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or on account of any byelaws or regulations lawfully in force in any graveyard limiting the times at which burials may take place in such graveyard, the person receiving the notice shall, unless some other day or time shall be mutually arranged within twenty-four hours from the time of giving or leaving such notice, signify in writing, to be delivered to or left at the address or usual place of abode of the person from whom such notice has been received, or at the house where the deceased person is lying, at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day shall be a Sunday, Good Friday, or Christmas Day) of the day next following, such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place, at the hour so appointed or mutually arranged, and in other respects in accordance with the notice: Provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October

and the first day of April: Provided also, that no such burial shall take place in any churchyard on Sunday, or on Good Friday or Christmas Day, if any such day being proposed by the notice shall be objected to in writing for a reason assigned by the person receiving such notice. Sect. 3.

When no such intimation of change of hour is sent to the person from whom the notice has been received, or left at the house where the deceased person is lying, the burial shall take place in accordance with and at the time specified in such notice. Sect. 4.

All regulations as to the position and making of the grave which would be in force in such churchyard or graveyard in the case of persons interred therein with the service of the Church of England shall be in force as to burials under this Act; and any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled, in case of a burial under this Act, to receive the like fee in respect thereof. Sect. 5.

At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place. The burial may take place, at the option of the person so having the charge of or being responsible for the same as aforesaid, either without any religious service, or with such Christian and orderly religious service at the grave, as such person shall think fit; and any person or persons who shall be thereunto invited, or be authorised by the person having the charge of or being responsible for such burial, may conduct such service or take part in any religious act thereat. The words "Christian service" in this section shall include every religious service used by any church, denomination, or person professing to be Christian. Sect. 6.

All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any

church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanour. Sect. 7.

All powers and authorities now existing by law for the preservation of order, and for the prevention and punishment of disorderly behaviour in any churchyard or graveyard, may be exercised in any case of burial under this Act in the same manner and by the same persons as if the same had been a burial according to the rites of the Church of England. Sect. 8.

Nothing in this Act shall authorise the burial of any person in any place where such person would have had no right of interment if this Act had not passed, or without performance of any express condition on which, by the terms of any trust deed, any right of interment in any burial-ground vested in trustees under such trust deed, not being the churchyard or graveyard, or part of the churchyard or graveyard, of the parish or ecclesiastical district in which the same is situate, may have been granted. Sect. 9. Burials under the Act are to be registered. See *post*, Chap. V. Sect. I. Every order of a coroner or certificate of a registrar given under the provisions of section seventeen of the Births and Deaths Registration Act, 1874, shall, in the case of a burial under that Act, be delivered to the relative, friend, or legal representative of the deceased, having the charge of or being responsible for the burial, instead of being delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate shall have been given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings, and any such relative, friend, or legal representative so having charge of or being responsible for the burial of the body of any person buried under this Act as aforesaid, as to which no order or certificate under the same section of the said Act shall have been delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds. Sect. 11.

No minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said Church in any unconsecrated burial-ground or cemetery

or part of a burial-ground or cemetery, or in any building thereon, in any case in which he might have lawfully used the same service, if such burial-ground or cemetery or part of a burial-ground or cemetery had been consecrated. The relative, friend, or legal representative having charge of or being responsible for the burial of any deceased person who had a right of interment in any such unconsecrated ground vested in any burial board, or provided under any Act relating to the burial of the dead, shall be entitled, if he think fit, to have such burial performed therein according to the rites of the Church of England by any minister of the said Church who may be willing to perform the same. Sect. 12.

From and after the passing of this Act it shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the ordinary, without being subject to any ecclesiastical or other censure or penalty. Sect. 13.

Save as is in this Act expressly provided as to ministers of the Church of England, nothing herein contained shall authorise or enable any such minister who shall not have become a declared member of any other church or denomination, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act which he would not by law have been authorised or enabled to do if this Act had not passed, or to exempt him from any censure or penalty in respect thereof. Sect. 14.

No rights of the incumbent of the parish in the churchyard are abrogated by the Act, but certain new rights bestowed upon others are created by it.

Section 12 permits the use of a service sanctioned by the ordinary over any that die unbaptized, or have been excommunicated, or have laid violent hands on themselves, at the option of the clergyman, and over any that die unbaptized, at the request of the relative, friend, or legal representative having the charge of the funeral of the deceased.

Refusing Burial.] The duty cast upon the clergyman by his

office, in respect of burials, is enforced by *Canon* 68, which provides that no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof (see *Ex parte Titchmarsh*, 9 Jur. 159), in such manner and form as is prescribed in the Book of Common Prayer. And if he shall refuse so to do (except the deceased were denounced, excommunicated *majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months. But where sufficient evidence has appeared to the bishop of the repentance of the deceased, commissions have been granted, both before and since the Reformation, not only to bury persons who died excommunicated, but to absolve them, in order to Christian burial. *Gibs.* 450.

Sufficiency of Baptism by Dissenter.] The Rubric (confirmed by 13 & 14 Car. 2, c. 4) forbids the use of the customary office in the burial of any that die unbaptized. This was at one time thought to have made church baptism essential; but in *Kemp v. Wickes*, 3 Phill. 286, the baptism of a child by a dissenting minister was held sufficient to entitle the child to Christian burial by a minister of the Church of England. See *Escott v. Martin*, 4 Moore, P. C. C. 104.

Other Exclusions.] The Rubric, before the office of burial, is in this form: "Here it is to be noted, that the office ensuing is not to be used for any that die unbaptized, or excommunicate, or have laid violent hands upon themselves." It seems to be clear, that attainted traitors and felons, who die before execution, are entitled to Christian burial; and, as they are admitted to the receiving of the sacrament and other rites of the Church, and may be attended by ministers of the Church of England in their last extremity, there appears to be no good reason why death by the law should deprive them of this privilege, though by two ancient canons it was denied them. 1 *Burn's Ecc. L.* 261.

Suicides.] Of the class who have laid violent hands upon themselves is to be understood, not all who have procured death unto themselves, but those only who have done it voluntarily, having the capacity to govern themselves; and not idiots, lunatics, or persons otherwise of insane mind. The proper judges whether persons who died by their own hands were out of their senses are, doubtless, the coroner's jury; or, if the body cannot be viewed, the jus-

tices in sessions may inquire, though their finding is traversable. But the minister of the parish is neither entitled nor able to judge in the affair, but may well acquiesce in the public determination, without making any private inquiry. *Cooper v. Dodd*, 2 Robert, Ecc. R. 270. The coroner is bound to receive evidence to prove that the deceased was *non compos*, which, if he refuse, the inquisition may be quashed by the Queen's Bench, who are the sovereign coroners. 3 *Inst.* 55. And though there may be reason to suppose that the coroner's jury, from motives of compassion, readily yield to slight evidence of this nature, yet on their returning an acquittal of the crime of self-murder—the body in that case not being demanded by the law—it seemeth that a clergyman may and ought to admit that body to Christian burial. 1 *Burn's Ecc. L.* 266.

Felo-de-se.] By 4 Geo. 4, c. 52, it is enacted, that it shall not be lawful for any coroner, or other officer having authority to hold inquests, to issue any warrant, or other process, directing the interment of the remains of persons against whom a finding of *felo-de-se* shall be had in any public highway; but such coroner or other officer shall give directions for the private interment of the remains of such person *felo-de-se*, without any stake being driven through the body of such person, in the churchyard or other burial-ground of the parish or place in which the remains of such person might, by the laws or customs of England, be interred if the verdict of *felo-de-se* had not been found against such person; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night. Sect. 1. But this Act does not authorize the performing any of the rites of Christian burial in such cases, nor otherwise alter the laws and usages relating to the burial of such persons. Sect. 2.

Taking Corpse into Church, &c.] It seems to be discretionary in the minister whether the corpse shall be carried into the church or not. And there may be good reason for this, especially in cases of infection. 1 *Burn's Ecc. L.* 267.

Ringings at Funerals.] The 67th canon directs, that after the party's death there shall be rung no more but one short peal, and one before the burial, and one after the burial.

Burial Fees.] All the ecclesiastical authorities concur in declaring that payment of fees is not a condition precedent to the right

of interment of a parishioner; for burial ought not to be sold, though, if there be a custom or prescription to pay, they may be recovered. 1 *Burn's Ecc. L.* 268; *Lind.* 268; *Andrews v. Cawthorne*, Willes, 536; *Spry v. Gallop*, 16 M. & W. 716. Sir Wm. Scott, in *Gilbert v. Buzzard*, 2 Hagg. R. 355, after recognising the above doctrine: says: "But this has not been the way of considering that matter since the Reformation, for the practice goes up at least nearly as far; it appears founded at least upon reasonable consideration, and is subjected to the proper control of an authority of inspection. In populous parishes, where funerals are very frequent, the expenses of keeping churchyards in an orderly and seemly condition is not small, and that of purchasing new ones, when the old ones become surcharged, is extremely oppressive. To answer such charges, both certain and contingent, it surely is not unreasonable that the actual use should contribute when it is called for. At the same time the parishes are not left to carve for themselves in imposing these rates; they are all submitted to the examination of the ordinary, who exercises his judgment, and expresses the result, by a confirmation of their propriety, in terms of very guarded caution. It is, perhaps, not easy to say where the authority could be more properly lodged, or more conveniently exercised." Sir Simon Degge says, that the accustomed fee to the parson for breaking the soil in the churchyard is, for the most part, 3s. 4d., and for opening the floor of the chancel, 6s. 8d. *Degge*, p. 146. Where application is made to the rector for leave to bury in the church, the person giving the licence may insist on his own price. 1 *Salk.* 334.

Fees on Pauper Funerals.] It was formerly questionable whether a clergyman was entitled to the usual fees upon the burial of a pauper who leaves no property whatever, and whose interment is conducted, and the ordinary expenses thereof defrayed, by the parish. But the 7 & 8 Vict. c. 101, s. 31, has now provided, that in all cases of burial under the direction of the guardians or overseers (see *ante*, p. 57), the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out of the poor rate, for the burial of each such body, to the person or persons who by such custom or under such Act may be entitled to receive any fee.

In the case of the burial of a destitute wayfarer, or wanderer, or foundling, or pauper irremovable by reason of five years' residence,

dying within the union, the expenses are to be charged to the common fund of the union. 11 & 12 Vict. c. 110, ss. 1, 3; 12 & 13 Vict. c. 103, s. 1.

Where Fees payable.] A custom that on the death of a person within one parish, and burial within the chancel of another parish, the same fees shall be paid to the parson and churchwardens of the parish in which the death took place, as are payable for burials in that parish, is contrary to reason, and void. *Topsall v. Ferrers*, Hob. 175. See *Salk.* 332. But Dr. Gibson saith, a fee for burial belongs to the minister of the parish in which the party deceased heard divine service and received sacraments, wheresoever the corpse be buried. And this, he observes, is agreeable to the rule of the canon law, which says, that every one, after the manner of the patriarchs, shall be buried in the sepulchre of his fathers; nevertheless, that if any one desires to be buried elsewhere, the same shall not be hindered, provided that the accustomed fee be paid to the minister of the parish where he died, or at least a third part of what shall be given to the place where he shall be buried. *Gibs.* 452. As to the rights of incumbents, &c., to fees for burials in cemeteries, see 15 & 16 Vict. c. 85, s. 32; 20 & 21 Vict. c. 81, s. 5; and see *Day v. Peacock*, 34 L. J. Q. B. 225; *Crowshaw v. Wigan Burial Board*, L. R. 8 Q. B. 217.

Customs as to Fees.] The proportion of fees due for the burial of persons, whether to the incumbent or churchwardens, whether for burying in or out of the parish, depends upon the particular usage and custom of each parish respectively. But although the rule of the canon law is, that, in case of denial of the customary fee, justice is to be done by the ordinary; yet the temporal courts reserve to themselves the right of determining, first, whether there is such a custom, in case that is denied, and, secondly, whether it is a reasonable custom, in case the custom itself is acknowledged. *Gibs.* 453; *Fruin v. Dean and Chapter of York*, 2 Keb. 778; *Andrews & Symson*, 3 Keb. 523. By usage about London the churchwardens take the money for burying in the church or churchyard, and the parson has nothing but for burial in the chancel. *Anon.* 2 Sho. 184.

The 6 & 7 Will. 4, c. 86, s. 49, provides that the registration of deaths under it is not to affect the right of any officiating minister to the fees usually paid for burials; and a similar reservation is contained in the 15 & 16 Vict. c. 85, for providing new burial-grounds. *Ante*, p. 51.

Burials in new Churches.] By the 58 Geo. 3, c. 45, no burials are to be permitted in any church or chapel erected under the Act, or in the adjacent cemetery at a less distance than twenty feet from the external walls, except in vaults wholly arched with brick or stone under any church or chapel, and to which the only access shall be by steps on the outside of the external walls, under the penalty of 50*l.* upon conviction before two justices of the peace, one-half to the informer, the other to the poor of the parish. Sect. 80.

Exhumation.] Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it is not lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without the licence of Secretary of State. 20 & 21 Vict. c. 81, s. 25. See *Allan v. Colthurst*, L. R. 2 Ad. & Ec. 30; 37 L. J. Ecc. 36; *Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 37.

With regard to registration of burials, see *post*, Chap. V., Sect. I.

CHAPTER III.

MINISTER AND OFFICERS OF THE CHURCH.

- SECTION I. *Minister or Incumbent.*
 II. *Residence.*
 III. *Vicars.*
 IV. *Curates.*
 V. *Churchwardens.*
 VI. *Parish Clerk.*
 VII. *Organist.*
 VIII. *Sexton.*
 IX. *Beadle.*
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SECTION I.—MINISTER OR INCUMBENT.

Incumbent.] By incumbent is meant the individual, whether rector, vicar, or by whatever title he is known, who is the ecclesiastical head of the parish and temporal representative of his church. The rights and duties of the incumbent, with respect to the various temporalities of his church, will be detailed under the different heads into which the general subject is divided.

How appointed.] Every incumbent must be presented, admitted, instituted, and inducted. Presentation is the offering of the clerk to the ordinary. Admission is the approval of the presentee by the bishop after examination; and institution is the act by which he commits the cure to him. *Wats. c. 15.* When the benefice is in the bishop's gift or falls to him by lapse, the bishop does not present, but institutes at once, and this is called Collation. Induction is the giving actual possession of the temporalities of the Church. Presentation gives to the clerk a right *ad rem*, but institution or collation gives him a right *in re*, and enables him to enter into the glebe. It is a prerogative of the Crown to present to a benefice in England which becomes vacant by the promotion of the

incumbent to a bishopric in England. *Reg. v. Provost and Fellows of Eton College*, 27 L. J. Q. B. 132. A bishop is entitled to a reasonable time to examine a clerk presented to him for institution. *Gorham v. Bishop of Exeter*, 2 Robert. Ecc. R. 1. Where in a suit of *duplex querela* the bishop justifies his refusal to institute on the ground that the promovent is *minus sufficiens in literaturâ*, it is for the Court to determine whether the standard up to which the bishop considers the ability of the promovent ought to come is such a standard as is required by law. *Willis v. Bishop of Oxford*, L. R. 2 P. D. 192.

By 14 Car. 2, c. 4, every person must have been ordained priest before he can be admitted to any parsonage, vicarage, benefice or other ecclesiastical preferment whatever; and any one presuming to be admitted without such ordination forfeits 100*l.* No person can be parson, vicar, &c., until he is twenty-four years of age. *Gibs.* 848. By 1 & 2 Vict. c. 106, s. 104, the bishop may, in the four Welsh dioceses, refuse institution or licence to any person who is found unable to preach, administer the sacrament, and converse in Welsh.

A presentation before institution may be revoked. *Rogers v. Holled*, 2 W. BL 1039; *Att.-Gen. v. Wycliffe*, 1 Ves. sen. 81. Or the patron may, before admission, present a second clerk, but if he do so, the ordinary may admit which he chooses. *Vin. Ab.* "Presentation," V. a. The death of the patron before institution is not a revocation. *Ibid.*

Induction.] Induction is an act of a temporal nature; for by it the incumbent becomes seised of the temporalities of the Church. By this ceremony he is put in the actual possession of part for the whole, as the key, and may afterwards maintain an action for a trespass on the glebe, though he has not actually entered upon the glebe itself. *Bulwer v. Bulwer*, 2 B. & Ald. 470. He is thus unexceptionably entitled to make grants, or to sue, or to plead (as occasion shall require) that he is *parson imparsonæ*; and by this the Church also is full against all persons, not excepting the King. On which account, induction is compared in the books of common law to livery of seisin, by which possession is given of temporal estates. *Gibs.* 814; 1 *Burn's Ecc. L.* 176. A party having a corporate and spiritual character to whom an appropriation of a benefice has been made, may become incumbent without admission or institution, and may enter on the rectory and take the profits

without induction. See *Plowd.* 403—500 ; *R. v. Bayley*, 1 B. & Ad. 761 ; *R. v. Dean of Rochester*, 3 B. & Ad. 95. Institution and induction are sufficient to support an ejectment. *Doe v. Carter*, R. & M. 237.

Has Freehold of Church.] Although the freehold of the church, churchyard and glebe belong to the parson, yet, properly speaking, the fee-simple is not in him, but in abeyance, and therefore he could not have a writ of right; *Co. Lit.* 341 b ; but in all other respects he has the same means of enforcing and defending his interests therein as the owner of a life interest has in his freehold. He may make a lease of the church and churchyard ; 2 *Rol. Abr.* 337 ; may have the trees growing in the churchyard for the repair of the church ; and can alone give a licence for burying in the church ; neither the ordinary nor the churchwardens having any authority for this purpose. *Cro. Jac.* 367 ; *Com. Dig.* “ *Esglise*,” G. 1.

By 8 & 9 Vict. c. 70, s. 13, the freehold of the site of churches conveyed to the Ecclesiastical Commissioners, and of the burial-ground, house, &c., vests in the incumbent for the time being.

By the 19 & 20 Vict. c. 104, s. 10, the freehold of the site of the church of any new parish created under this Act, or the New Parishes Acts, 1843 and 1844, and of the churchyard, burial-ground and vaults belonging thereto, with the rights, members and appurtenances (but if these are vested in a vestry by Act of Parliament, not without the consent of the vestry), and the house of residence and the lands, tithes, &c., are to be vested in the incumbent and his successors for ever in right of his incumbency.

It must, however, be observed, that, although the freehold of the parish church, with all its appurtenances, vests in the incumbent upon his induction, he is liable to deprivation, unless he confirm his possession by the due observance of the several conditions required by law.

Oaths.] Before institution, collation, or licensing, the parson must take the oaths of allegiance and supremacy in the presence of the archbishop or bishop by whom he is instituted, collated, or licensed, or the commissary of such archbishop or bishop. 28 & 29 Vict. c. 122, s. 5 ; and also must make and subscribe the declaration of assent (see *infra*), and the declaration against simony. Sect. 3.

The declaration against simony is as follows :

“ I, A. B., do solemnly declare, that I have not made by myself, or by any other person on my behalf, any payment, contract or

promise of any kind whatsoever which, to the best of my knowledge or belief, is simoniacal touching or concerning the obtaining the preferment of _____, nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract or promise made by any other without my knowledge or consent." 28 & 29 Vict. c. 122, s. 2.

Reading in.] By the statutes on this subject the incumbent is bound, within two months after induction, to read the morning and evening prayers at the proper times appointed; and, after such reading, to declare publicly, before the congregation assembled, his unfeigned assent to the use of all things therein prescribed, in the form provided by the Act. 13 & 14 Car. 2, c. 4, s. 4.

Every person instituted or collated to any benefice with cure of souls, or licensed to a perpetual curacy, shall, on the first Sunday on which he officiates in the church of such benefice or perpetual curacy, or on such other Sunday as the ordinary may appoint and allow, publicly and openly, in the presence of the congregation there assembled, read the Thirty-nine Articles of religion, and immediately after reading the same, make the declaration of assent, adding after the words "articles of religion" in the declaration the words "which I have now read before you." 28 & 29 Vict. c. 122, s. 7.

The declaration of assent is as follows:—

"I, A.B., do solemnly make the following declaration: I assent to the Thirty-nine Articles of religion and to the Book of Common Prayer, and of the ordering of bishops, priests, and deacons. I believe the doctrine of the United Church of England and Ireland, as therein set forth, to be agreeable to the word of God; and in public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority." Sect. 1.

Non-compliance with such requirements involves an absolute forfeiture of the benefice or perpetual curacy. Sect. 7.

Performance of Service.] By the 58 Geo. 3, c. 45, s. 65, the bishop may require a third service to be performed in any church or chapel in his diocese under certain circumstances; and by the 1 & 2 Vict. c. 106, s. 80, the bishop may order two full services, including a sermon or lecture, on every Sunday during the whole or part of the year, in any benefice of whatever value; and also in the church or chapel of every parish or chapelry, where a benefice

is composed of two or more parishes or chapelries, if the annual value arising from that parish or chapelry is 150*l.* and its population 400. This does not affect the previous enactment.

The Act of Uniformity is amended by 35 & 36 Vict. c. 35, which provides that the shortened form of morning and evening prayer contained in the schedule may be used on any day except Sunday, Christmas Day, Ash Wednesday, Good Friday, and Ascension Day. Sect. 2.

That when any special form of service approved by the ordinary is given on special occasions, there shall not be introduced into such service anything except anthems or hymns which does not form part of the Holy Scriptures or Book of Common Prayer. Sect. 3.

That an additional form of service varying from any form prescribed by the Book of Common Prayer may be used at any hour on any Sunday or holy day in any cathedral or church in which there are duly read, said, or sung, as required by law on such Sunday or holy day at some other hour or hours the order for morning prayer, the litany, such part of the order for the administration of the holy communion as is required to be read on Sundays or holy days if there be no communion, and the order for evening prayer, so that there be not introduced into such additional service any portion of the order for the administration of the holy communion, or anything except anthems or hymns, which does not form part of the Holy Scriptures or Book of Common Prayer, and so that such form of service and the mode in which it is used is approved by the ordinary. Sect. 4.

The order for morning prayer, the litany, the order for the administration of the holy communion, may be used together or in varying order as separate services, or the litany may be said after the third collect in the order for evening prayer, either in lieu of or in addition to the use of the litany in order for morning prayer, without prejudice nevertheless to any legal powers vested in the ordinary, and any of such forms of service may be used with or without the preaching of a sermon. Sect. 5.

A sermon or lecture may be preached without the common prayers or services appointed by the Book of Common Prayer being read before it is preached, so that such sermon or lecture be preceded by any service authorized by the Act, or by the bidding prayer, or by a collect taken from the Book of Common Prayer, with or without the Lord's Prayer. Sect. 7.

Unlawful Ceremonies.] To cause lighted candles to be held one on each side of the priest when reading the gospel, such lighted candles not being required for the purpose of giving light, is unlawful. *Sumner v. Wix*, L. R. 3 A. & E. 58; 39 L. J. Ecc. 25; *Martin v. Mackonochie*, L. R. 4 A. & E. 279; 39 L. J. P. C. 11. Processions proceeding round the interior of a church immediately before the commencement of morning or evening service, or immediately after the conclusion of morning or evening service, so conducted as to constitute a rite or ceremony in connection with the service, are illegal. The ceremonial use of crucifixes or images during divine service is unlawful. *Elphinstone v. Purchas*, L. R. 3 A. & E. 66; 39 L. J. P. C. 124. And see *ante*, p. 29, ORNAMENTS; and *post*, LORD'S SUPPER.

Freedom from Tolls.] By the 3 Geo. 4, c. 126, s. 32, any rector, vicar, or curate going to or returning from visiting any sick parishioner or on other his parochial duty within his parish, is exempted from toll on turnpike roads. A clergyman *bond fide* going to visit a sick parishioner is not, by reason of his having other persons in the carriage with him, disentitled to the exemption. *Layard v. Ovey*, L. R. 3 Q. B. 415; 37 L. J. M. C. 158.

It has been held that the curate of a parish, while officiating temporarily in a neighbouring parish, without the permission or licence of the bishop, during the absence of the rector of the latter parish, is not, when riding to perform duty in the latter parish, entitled to the exemption. *Brunskill v. Watson*, L. R. 3 Q. B. 418.

Disabilities of Clergymen.] Clergymen cannot be elected as councillors or aldermen of any borough; 5 & 6 Will. 4, c. 76, s. 28. Clergymen (but not dissenting ministers) are also disqualified from being members of the House of Commons; 41 Geo. 3, c. 63; but on relinquishment of the sacred office, under 33 & 34 Vict. c. 91, they are discharged from all restraints and prohibition under those Acts.

By 33 & 34 Vict. c. 77, they are exempted from serving on juries. They are not compellable to serve as sheriff, constable or overseer of the poor. *Degge*, p. 120.

Trading, Farming, &c.] The statute in force with respect to trading is the 1 & 2 Vict. c. 106, sect. 28 of which enacts, that no spiritual person licensed to perform the duties of any ecclesiastical office whatever shall take to farm for occupation by himself any lands exceeding eighty acres in the whole, for the purpose of culti-

vation, without permission in writing by the bishop, specially given for that purpose under his hand, every such permission to specify the number of years, not exceeding seven, for which it is given. And every spiritual person so offending is to forfeit 40s. for every acre above eighty acres for each year of such occupation and cultivation. By sect. 29, no spiritual person, as above, is to trade or deal for gain or profit in any goods, &c., unless such trading or dealing shall be carried on by more than six partners, or unless such trading or dealing shall have devolved on him by devise, bequest, inheritance, settlement, marriage, bankruptcy or insolvency; but in no case is he to act as director or managing partner, or to carry on such trade in person. See 4 Vict. c. 14.

Exceptions.] Sect. 30 of 1 & 2 Vict. c. 106, contains certain exceptions in the cases of spiritual persons engaged in education, or of articles *bond fide* bought to be consumed in the family, though in part sold at an advanced price; or of books sold by means of a bookseller or publisher; or of being director, partner or shareholder in any benefit or fire or life assurance society; or of buying and selling articles necessary for his glebe or demesne lands; or selling the produce of his mines. But no spiritual person is to buy or sell in any market, fair or place of public sale.

Penalties.] By sect. 31, spiritual persons trading or dealing contrary to the Act may be cited by the bishop before a competent judge; and the penalty is, for the first offence, suspension for a period not exceeding one year; for the second offence, suspension for such period as the judge shall think fit; for the third offence, deprivation.

Contracts not void.] But no contract is to be deemed void by reason only of its having been entered into by a spiritual person trading or dealing, solely or jointly, against the Act; but such contract may be enforced against such spiritual person, either jointly or solely, as if no such spiritual person had been a party to it. See *Lewis v. Bright*, 4 E. & B. 917.

Correction of Clerks in Orders.] Clergymen are liable to be punished for irregularity in the discharge of their duties, and preaching doctrines contrary to the articles of the Church. The modes of punishment vary according to the gravity of the offence, and are admonition, suspension, degradation or deprivation. *Saunders v. Davies*, 1 Add. 299.

Suspension is from office and benefice jointly, or from office or

benefice singly ; and is a temporary degradation or deprivation, or both. 3 *Burn's Ecc. L.* 667.

The bishop may annex to a suspension for a specified time the condition that the clerk shall, at the expiration of that time, procure a certificate of good behaviour, to be approved by the bishop before the suspension is removed. *Bishop of Lincoln v. Day*, 1 Robert. Ecc. R. 724 ; *Ex parte Rose*, 18 Q. B. 751. A decree of suspension regularly enforced operates for the time of its endurance as if the clergyman were dead or absolutely removed from his benefice. *Bunter v. Cresswell*, 14 Q. B. 825.

Degradation is an ecclesiastical censure whereby a clergyman is incapacitated from exercising any holy function. *Gibbs*. 1066. Deprivation is an ecclesiastical sentence whereby a clergyman is deprived of his parsonage or other spiritual promotion. By *Canon* 122, the two latter sentences must be pronounced by the bishop, with the assistance of his chancellor and the dean (if they may conveniently be had), and some of the prebendaries, if the Court be kept near the cathedral church ; or of the archdeacon (if he may be had conveniently), and two other, at least, grave ministers and preachers, when the Court is kept elsewhere.

Where a statute declares that upon doing or omitting a certain act the party shall be *ipso facto* deprived, there is no need of a sentence of deprivation. *Godol.* 388 ; *Dyer*, 2, 756 ; *Degge*, p. 83 ; *Alston v. Atlay*, 7 A. & E. 306. But where the intervention of the Court is necessary, when a person is in actual possession of a benefice, he must be cited, and charged by way of libel or articles ; he is also to be allowed counsel, and time for his proofs, and there must be a solemn hearing and sentence by the bishop. *Ayliffe, Parerg.* 209. The advisedly maintaining or affirming doctrines contrary to the Thirty-nine Articles, and persisting therein, *Voysey v. Noble*, L. R. 3 P. C. 357 ; 40 L. J. P. C. 40 ; and disobedience to the constitutions of the Church, *Cro. Jac.* 57 ; are grounds of deprivation. So conviction for felony or perjury, 5 *Rep.* 58 ; want of abilities, incontinence, drunkenness, and others enumerated in *Gibbs. Cod.* 1116 ; *Rogers, Ecc. L.* 303.

Church Discipline Act.] The manner of proceeding against clergymen charged with any offence against the laws ecclesiastical, or concerning whom there exists scandal or evil report as having offended against such laws, is now regulated by the 3 & 4 Vict. c. 86, and 37 & 38 Vict. c. 85.

Commission to issue.] By sect. 3 of the former Act, in such cases the bishop of the diocese in which the offence is alleged to have been committed may, on the application of any party complaining, or of his own mere motion, issue a commission to five persons, one of them to be his vicar general, or an archdeacon or rural dean, to inquire into the charge or report. Notice of the intention to issue the commission, with an intimation of the nature of the offence and the names, addition and residence of the party on whose application or motion the commission is to issue, is to be sent to the accused party fourteen days before it issues.

If the original promoter die, the Court will allow another person to be substituted. *Elphinstone v. Purchas*, ante. See as to proceedings under the Act, *Sheppard v. Phillimore*, L. R. 2 A. & E. 335; *Richards v. Fincher*, L. R. 4 A. & E. 107; 43 L. J. Ecc. 21.

The bishop has a discretion whether he will issue the commission of inquiry; and no *mandamus* will lie to compel him to do so. *Reg. v. Bishop of Oxford*, L. R. 5 App. Cas. 214; 49 L. J. H. L. 577. But if he issues it, and a report is made and articles filed and served, he is bound to go on, if required by the party complaining, to cite the accused and hear the charge. *Reg. v. Archbishop of Canterbury*, 3 Ell. & B. 546; 25 L. J. Q. B. 346.

Public Worship Regulation Act.] In 1874 an Act (37 & 38 Vict. c. 85) was passed for the better administration of the law respecting the regulation of public worship, and Lord Penzance was appointed the judge before whom proceedings are to be taken under the Act.

If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners (being males over twenty-one) of the parish, within which archdeaconry or parish any church or burial ground is situate, who have signed the declaration contained in the schedule, and have lived in the diocese during one year next before taking any proceeding under the Act, are of opinion—

- (1) That in such church any alteration in or addition to the fabric, ornaments or furniture thereof, has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church; or
- (2) That the incumbent has within the preceding twelve months used or permitted to be used in such church or burial-ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or

(3) That the incumbent has within the preceding twelve months failed to observe or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance in such church or burial-ground of the services, rites and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies—they may represent the same to the bishop. No proceedings can be taken under the Act as regards any alteration in or addition to the fabric of a church, if such alterations and additions have been completed for five years. Sect. 8.

In a criminal suit against a clerk instituted in an Ecclesiastical Court, a monition to abstain in future from the commission of unlawful acts may be attached to a definitive sentence ; and if the monition be disobeyed, the clerk, upon motion and without a fresh suit, may be condemned to suspension *ab officio et beneficio*. *Martin v. Mackonochie*, L. R. 4 Q. B. D. 697 ; 49 L. J. Q. B. 9.

Resignation.] By the provisions of a recent statute clergymen permanently incapacitated by illness can resign their benefices with provision of pensions.

On a representation being made to the bishop in the form contained in the schedule to 34 & 35 Vict. c. 44, by the incumbent of any benefice (provided he has been the incumbent of such benefice for seven years continuously), that he desires, on the ground that he is incapacitated by permanent mental or bodily infirmity from the due performance of his duties, to retire from his benefice under the provisions of the Act, the bishop, if he sees fit, may cause a commission to be issued to five persons to inquire and report upon all such matters in anywise affecting such resignation. Sect. 5.

One of the five commissioners is to be the archdeacon of an archdeaconry or the rural dean of a rural deanery of the diocese wherein the benefice is situate ; one other of the commissioners is to be an incumbent of the diocese nominated by the incumbent wishing to retire ; one other an incumbent nominated by the bishop ; one other a magistrate for the county nominated by the presiding chairman of the last preceding quarter sessions ; and the remaining commissioner is to be nominated by the patron. Sect. 6.

The commissioners are to give seven days' notice of their first meeting, affixed to the usual place of public notices in the church of the benefice.

The commissioners may examine on oath persons who are desirous or willing to be examined by them, and in their return to the commission shall certify what appears to them material, together with their opinion as to the expediency of the proposed resignation, and if any three of them deem the resignation expedient, shall specify the amount of pension which in their opinion ought to be allowed out of the revenues of the benefice of the retiring incumbent ; provided that in no case shall such person exceed one third part of annual value of the benefice resigned. Sect. 8.

The pension is to be charged on the benefice, and the pensioned clerk is to be amenable to ecclesiastical discipline. Sect. 13.

The parsonage house is to belong to the new incumbent, sect. 14 ; and the pension is to cease or be altered under certain circumstances. Sect. 15.

The term "benefice" is to comprehend all rectories with cure of souls, vicarages, new vicarages, perpetual curacies, &c.

35 Vict. c. 8, provides for the relief of deans and canons who by reason of age or any mental or bodily infirmity may be permanently incapacitated from the due performance of their duties.

Relinquishment.] Until recently a clergyman could not wholly relinquish his sacred calling, but now 33 & 34 Vict. c. 91 enables him (after resigning all preferment) to relinquish holy orders. Upon execution of which he becomes incapable of officiating in any manner as a minister of the church, and is discharged from all the disabilities of his former office. The form of the deed is set out in the Schedule to the Act. The Act does not relieve any person or his estate from any liability in respect of dilapidations or from any debt or other pecuniary liability incurred or accrued before or after the execution of such deed. Sect. 8.

Where a clergyman had executed the deed, and caused it to be inrolled, but did not take any further steps under the Act, it was held, the clergyman having subsequently abandoned his intention of relinquishing his office, that the inrolment might be vacated. L. R. 15 Eq. 154.

Sequestration.] No levy can be made by the sheriff under a *fi. fa.* upon an incumbent's ecclesiastical goods ; but a *levari facias* must be directed to the bishop of the diocese who grants a sequestration, which is a mandate founded on the writ, and directing certain persons to receive and apply the profits of the benefice. 2 Inst. 4 ; *Lanquet v. Jones*, 1 Str. 87 ; 3 Black. Com. 418. But

an inappropriate rectory is a lay fee, and cannot be sequestered. *Anon.* 2 Vent. 35.

The writ of *levari facias* being taken to the registrar of the diocese, he thereupon issues the sequestration, which is in the nature of a warrant, usually directed to the churchwardens, requiring them to levy the debt of the tithes and other profits of the defendant's benefice; *Tidd*, 1024; but the plaintiff, on giving security to the bishop, may have it directed to persons of his own nomination instead of the churchwardens. *Tidd*, 1023. An attachment will lie for not returning the writ. *Reg. v. Bishop of St. Asaph*, 1 Wills. 332. The sequestration is published by fixing a copy on the church door. 7 Will. 4 & 1 Vict. c. 45, ss. 2 and 4. It operates from the time of publication, which is, however, necessary only to give priority in cases of conflicting rights, but the property as against the defendant is bound from the time when the sequestrator is appointed. *Bennett v. Apperley*, 6 B. & C. 630; *Wait v. Bishop*, 3 Dowl. P. C. 234; *Giles v. Grover*, 1 Cl. & F. 74. The Court out of which the writ issued may set aside the sequestration. *Bromage v. Vaughan*, 7 Exch. 223. Quære, whether the bishop should be made a party to the rule. *Bishop v. Hatch*, 1 A. & E. 171.

In these cases the bishop is a ministerial officer in place of the sheriff, and is bound to execute the first valid writ in point of date, and the Queen's Bench Divison has the same power over him as over the sheriff. *Reg. v. Bishop of London*, 1 D. & R. 486; *Campbell v. Whitehead*, 1 Hagg. Con. 311, n.

This kind of sequestration is a continuing execution, and continues in force until the debt and costs are realized, without reference to the time at which the writ is made returnable, or until the bishop is ruled to return it, which puts an end to the writ. *Marsh v. Fawcett*, 2 H. Bl. 582; *Powell v. Hibbert*, 15 Q. B. 138. Therefore a bishop may return a writ directed to his predecessor. *Phelps v. St. John*, 10 Exch. 895. Upon the bishop's return the Court will refer it to the master to examine the propriety of the deductions made from the sum levied. *Morris v. Phelps*, 4 Exch. 895.

Under a sequestration the landlord is entitled to be paid arrears of rent. *Dixon v. Smith*, 1 Swanst. 457.

A sequestration may also issue originally from the bishop acting judicially, for many causes, as for dilapidations, *Godol. App.* 14; default of insurance, or non-payment of principal and interest due

on mortgages, under 17 Geo. 3, c. 53, s. 6 ; 1 & 2 Vict. c. 106, s. 67 ; on account of vacancy of the benefice, *Godol. App.* 14 ; trading, non-residence, or other causes under 1 & 2 Vict. c. 106, which Act also directs the application of the profits, and provides that sequestration under it shall have priority, with the exception of prior sequestrations issued under 17 Geo. 3, c. 53. See sect. 110, and 34 & 35 Vict. c. 43.

A sequestration issued by virtue of a decree of suspension under the Church Discipline Act has the effect, from the time of its publication, of suspending the right to take the profits of the benefice under a prior sequestration founded on a writ of *levari facias*. *Bunter v. Cresswell*, 14 Q. B. 825. The fruits of the sequestration belong to the bishop as chief pastor of the church, subject to the duty of providing for the services. L. R. 12 Eq. 494.

Where, under a judgment recovered against the incumbent of a benefice or under the bankruptcy of such incumbent, a sequestration issues, and remains in force for six months, the bishop shall, after the expiration of such six months, and as long as the sequestration remains in force, provide for the due performance of the services of the church of the benefice, and have power to appoint and license curates for that purpose, with such stipend as the bishop thinks fit, provided that such stipend shall not exceed in the whole two thirds of the annual value of the benefice. 34 & 35 Vict. c. 45, s. 1.

Every stipend so assigned is to be paid by the sequestrator out of moneys coming to his hands under the sequestration, as long as it is in force, in priority to all sums payable by virtue of the judgment or the bankruptcy under which the sequestration issues, but not in priority of liabilities in respect of charges on the benefice. Sect. 3.

Where such a sequestration remains in force for more than six months, the bishop may, if it appears to him that scandal or inconvenience is likely to arise from the incumbent continuing to perform the services of the church while the sequestration remains in force, inhibit the incumbent from performing any services of the church within the diocese. Sect. 5.

During sequestration the incumbent's right of presentation to any vacant benefice of which he may be patron, in right of the benefice, under sequestration, is suspended. Sect. 6.

During sequestration the incumbent of the sequestered benefice

cannot accept any other benefice or preferment without the written consent of the bishop and the sequestrator. Sect. 7.

Rights of Sequestrators.] Sequestrators are not to meddle with any timber, trees, wood or underwood standing upon the glebes of the living, unless it be for necessary repairs of the church or parsonage, nor to commit any other waste thereupon. 9 Hen. 3, c. 5. And in the case of a sequestration for dilapidations, all the profits are not to be taken, but a portion is to be left to the minister for his livelihood. 34 & 35 Vict. c. 43.

Formerly sequestrators could not sue in their own names in the temporal courts. But now, by the 12 & 13 Vict. c. 67, s. 1, sequestrators are empowered to sue in their own names for tithes, rent, &c., due to the incumbent, or for lands, &c., subject to the sequestration. But they are not to bring any action or other proceeding (except against the incumbent) which could not have been brought by the incumbent if there had been no sequestration; and they cannot be compelled by the creditor at whose suit the sequestration has issued to bring any action, &c., unless he gives security against costs. By sect. 2, all payments to the sequestrator are to be discharges of the party paying, and the moneys received are to be applied as the profits of the benefice.

Bankruptcy of Incumbent.] The Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), sect. 88 provides that, where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee is to be sufficient authority for the granting of a sequestration; but the sequestrator is to allow out of the profits of the benefice to the bankrupt, while he performs the duties of the parish or place, such an annual sum, payable quarterly, as the bishop of the diocese directs.

The effect of the section is only to give priority to a sequestration issued by the trustee in the bankruptcy of a beneficed clergyman over a sequestration issued by an individual creditor in respect of a debt provable in the bankruptcy. *In re Meredith*, L. R. 11 Ch. D. 731. The fact that a bankrupt beneficed clergyman has obtained an order of discharge does not prevent the trustee from issuing a sequestration of the profits of the benefice which the bankrupt held at the time of the bankruptcy. *Id.*

Pluralities.] The law on this subject now depends on the 1 & 2 Vict. c. 106, and 13 & 14 Vict. c. 98. Their chief provisions are as follows:—

Cathedral Preferments and Benefices.] No spiritual person holding more than one benefice shall take to hold therewith any cathedral preferment or any other benefice ; or, holding any cathedral preferment and also a benefice, shall take to hold therewith any other cathedral preferment or benefice ; or, holding any preferment in any cathedral or collegiate church, shall take to hold therewith any preferment in any other cathedral or collegiate church. But a cathedral preferment, with or without a benefice, may be held with any office in the same cathedral or collegiate church, the duties of which are statutably or accustomably performed by the person holding such preferment. 1 & 2 Vict. c. 106, s. 2.

Honorary Canonries.] By the 4 & 5 Vict. c. 39, s. 3, the holding of an honorary canonry or of any prebend, dignity, or office, not endowed, or whereof the emoluments, &c., are vested in the Ecclesiastical Commissioners, or which may be hereafter endowed to an amount not exceeding 20*l.* a year, is not to prevent the holding therewith of more benefices than one [or of one benefice and one cathedral preferment in the same church. 13 & 14 Vict. c. 98, s. 11].

Archdeacon.] An archdeacon may hold with his archdeaconry two benefices, under the limitations of the Act as to distance, value, and population, one of them being within the diocese of which his archdeaconry forms a part ; or one preferment in any cathedral or collegiate church of such diocese, and one benefice within such diocese. 1 & 2 Vict. c. 106, s. 2. By 4 & 5 Vict. c. 39, s. 10, this is extended to peculiar localities situate within the diocese ; and by sect. 9, an archdeaconry may be endowed by annexing to it a benefice within the archdeaconry.

Distance and Value of Benefices.] It shall not be lawful (after the 14th August, 1850,) for any spiritual person to take and hold together any two benefices, except where the churches are within three miles of one another by the nearest road, and the annual value of one of which does not exceed 100*l.* 13 & 14 Vict. c. 98, s. 1. And two benefices may be held together according to the above provision, whatever is the aggregate yearly value of the two benefices. Sect. 2.

By 1 & 2 Vict. c. 106, s. 129, the distance is to be measured between the two churches, or the two nearest churches if more than one in the same benefice, by the nearest road or footpath, or by an accustomed ferry ; or, if there be no church on one of the benefices, in such manner as the bishop directs.

Population.] No spiritual person holding a benefice with a population of more than three thousand shall take to hold any other benefice, having at the time of admission, &c., thereto a population of more than five hundred ; or, holding the latter, shall take to hold the former. 1 & 2 Vict. c. 106, s. 4.

Licence.] Before any two benefices can be held together under this Act, a licence must be obtained from the Archbishop of Canterbury, under the seal of his office of faculties, the fees for which are : to the registrar, 30s. ; to the seal-keeper, 2s., and no other fee or stamp duty ; and the applicant need give no security. Should the archbishop refuse, application may be made to her Majesty to enjoin him to grant such licence. Sect. 6.

The person desirous of obtaining the licence must deliver to the bishop or bishops a statement under his hand, to be verified as he or they shall require, according to a form promulgated by the Archbishop of Canterbury, setting forth the yearly income on an average of three years ending the 29th of the previous September, the sources from which derived, the yearly amount of taxes, rates, tenths, dues, and other charges and outgoings on the same average, the population according to the last returns, and the distance between the livings. The bishop may inquire into the correctness of this statement, and within one month is to transmit a certificate to the Archbishop of Canterbury, setting forth a copy of the statement and other particulars. Sect. 7.

Avoidance of Benefice by Plurality.] If any spiritual person holding any cathedral preferment or benefice accepts and is admitted to any other contrary to the provisions of the Act, the first becomes *ipso facto* void, as if he had died or resigned. [See 13 & 14 Vict. c. 98, s. 7.] If holding any two or more benefices, he accepts any cathedral preferment or any other benefice ; or, if holding two or more cathedral preferments, he accepts any benefice ; or, if holding any cathedral preferment or preferments and benefice or benefices, he accepts any other benefice, he shall, before admission, in writing under his hand, declare to the bishop or bishops within whose diocese or dioceses any of the cathedral preferments holden by him are, which cathedral preferment and benefice, or which two benefices (being tenable under this Act), he proposes to hold together. A duplicate of this declaration is to be sent to the registry of the diocese and there filed. The cathedral preferments or benefices previously holden, and which he has not so declared his in-

tention to hold, or such benefices as shall not be tenable under this Act with the newly accepted benefice, shall become *ipso facto* void on his admission to the cathedral preferment or benefice so accepted, as if he had died or resigned. Sect. 11. The provisions of sect. 2, with respect to archdeacons or persons holding offices in a cathedral or collegiate church, are not affected by this section.

Meaning of Benefice.] The term "benefice" means benefice with cure of souls, and no other (unless it otherwise appears from the context), and comprehends all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel. 1 & 2 Vict. c. 106, s. 124; 13 & 14 Vict. c. 98, s. 3; see *Storie v. Bishop of Winchester*, 9 Com. B. 62.

Union of Benefices.] The 1 & 2 Vict. c. 106, s. 16 *et seq.*; the 13 & 14 Vict. c. 98, s. 8; the 23 & 24 Vict. c. 142; and the 34 & 35 Vict. c. 90, contain provisions for uniting two or more benefices, or one or more benefices, and one or more spiritual sinecure rectories or vicarages, contiguous to each other, without any limitation as to aggregate population or yearly value; and also for partly disuniting benefices previously united. 1 & 2 Vict. c. 106, s. 21. Where in one of two parishes, which have been united for thirty years before July, 1845, there is no consecrated church, and a new church has been built, the parish may be disunited. 8 & 9 Vict. c. 70, s. 5. Where two or more benefices are united and held by one incumbent, and there are more churches than one within the limit of such united benefice, the bishop may decree that one of such churches shall be the parish church, and that any other church shall either be pulled down, or suffered to remain standing and be used for divine service, or as a mortuary chapel. 34 & 35 Vict. c. 90, s. 3. Where there is a union of benefices, and the bishop has by faculty altered or readjusted the seats and the appropriation thereof in the church of the benefice, at least one half of the sittings are to be left unappropriated. 34 & 35 Vict. c. 90, s. 7. The power of allotment is thus limited to the other half of the seats.

SECTION II.—RESIDENCE.

Houses of Residence.] Several statutes have been passed with the object of providing houses of residence for incumbents. By 17

Geo. 3, c. 53, money may be raised by mortgage of the glebe, &c., for the purpose ; and by the 1 & 2 Vict. c. 106, s. 62, on the avoidance of a benefice, the bishop may require this to be done. See also 21 Geo. 3, c. 66 ; 7 Geo. 4, c. 66. ; 1 & 2 Vict. c. 23.

An incumbent may in manner provided by these Acts raise money for the purpose of purchasing any lands or hereditaments not exceeding twelve acres, contiguous to or desirable to be used with the parsonage house or glebe, or for the purpose of building any offices, stables, or out-buildings, or fences necessary for the occupation or protection of such parsonage, or for the purpose of restoring, repairing, or rebuilding the fabric of the chancel of the church (where the incumbent is liable to repair the same), or for the purpose of building, improving, enlarging, or purchasing any farm house, or farm buildings, or labourers' dwelling-houses, belonging to or desirable to be acquired for any farm or lands appertaining to such benefice, any sum not being less than 100*l.*, and not exceeding three years' net income of such benefice. Certain expenses incidental to such purchase may be paid out of the sum to be borrowed. 28 & 29 Vict. c. 69, s. 1.

Corporations and persons under disability or incapacity are now authorized to convey houses and lands for parsonages. Sect. 4. These Acts also contain provisions for the purchase, sale, and exchange of residence houses, and for grants of land or money being made for the same purposes. See also 43 Geo. 3, c. 108 ; 51 Geo. 3, c. 115 ; 19 & 20 Vict. c. 104, s. 27 ; 3 *Burn's Ecc. L.* tit. "*Residence Houses.*"

Fire Insurance.] The incumbent of every benefice is to insure, and during his incumbency keep insured, the house of residence, and farm, and other buildings belonging to the benefice, and also the chancel of the church when the incumbent is liable to repair it, against loss or damage by fire, in some fire office to be selected by the incumbent, in at least three fifths of the value thereof. 34 & 35 Vict. c. 43, s. 54.

If any building belonging to or forming part of any house of residence is unnecessary, the bishop may, upon the application of the incumbent, and with the written consent of the patron of the benefice, authorize in writing the removal of the said buildings, and the proceeds, if any, of such removal are to be applied to the improvement of the benefice in such manner as the bishop of the diocese and the patron of the benefice may agree on. Sect. 71.

By the 19 & 20 Vict. c. 50, where advowsons are vested in or in trustees for inhabitants, ratepayers, freeholders, or other persons, forming a numerous class and deriving no pecuniary advantage therefrom, they may be sold and the produce applied to the erection, rebuilding, or improvement of a parsonage house. An incumbent may borrow money on mortgage under the provisions of 17 Geo. 3, c. 53, for the purpose of enlarging and adding to the parsonage house, as well as for "building, rebuilding, and repairing," if such additions are considered necessary; and the incumbent may advance the money himself upon mortgage for such a purpose. *Boyd v. Barker*, 28 L. J. Ch. 445.

Resilence enforced.] 1 & 2 Vict. c. 106, and 13 & 14 Vict. c. 98, are the statutes upon which the whole law of clerical residence now depends, and no proceedings for enforcing spiritual residence can be taken otherwise than under the powers contained in those Acts. 32 & 33 Vict. c. 109.

Penalty for Absence.] By sect. 32 of the former Act, if any spiritual person holding a benefice shall absent himself from it, or from the house of residence, for any period exceeding three months together, or to be accounted at several times, in any one year, he is to forfeit, if the absence exceeds three, but not six months, one third; if it exceed six, but not eight months, one half; if it exceed eight months, two thirds; if for the whole year, three fourths of the annual value, unless he has such licence or exemption as is by the Act allowed, or unless he be resident at some other benefice of which he may be possessed. A proceeding for non-residence under this section is not a criminal proceeding within sect. 23 of the 3 & 4 Vict. c. 86, and a prohibition will not go to the Consistorial Court in such a case. *Rackham v. Bluck*, 9 Q. B. 691; 5 Moore, P. C. C. 305.

Licence where no House of Residence.] Where there is no house, or no fit house of residence, the bishop may, on application in writing by any spiritual person, by licence under his hand and seal (to be registered by the registrar of the diocese), permit such person to reside in some fit and convenient house, although not belonging to such benefice, such house to be particularly described and specified in the licence, and for a certain time to be therein also specified, not exceeding the period by the Act limited [till the 31st of December in the year next after the year in which it was granted, sect. 46]. This licence may be renewed, and every such

house shall be a legal house of residence for such specified time. But the house must be within three miles of the church or chapel of the benefice, and within two miles if such church or chapel is in any city, market, or borough town. Sect. 33.

Exemptions.] Any spiritual person being head ruler of any college or hall at Oxford or Cambridge, warden of the University of Durham, head master of Eton, Winchester, or Westminster school, and not having more than one benefice, is exempted from the penalties for non-residence. Sect. 37. The following persons are also exempt, while actually resident, and engaged or performing their duties :—Dean of any cathedral or collegiate church ; professor or public reader in either of the said universities [in this case the residence and performance of duties must be certified by the vice-chancellor or warden to the bishop of the diocese, within six weeks of the 31st December in each year] ; chaplain to the Queen, King, Queen Dowager, Queen or King's children, brothers or sisters, or to any archbishop or bishop, or to the House of Commons, clerk or deputy clerk of the closet, chancellor, vicar-general or commissary of any diocese, archdeacon, dean, subdeacon, priest or reader in any Queen or King's chapel at St. James's or Whitehall, reader in the Queen or King's private chapel at Windsor or elsewhere, preacher in any of the Inns of Court or at the Rolls ; provost of Eton, warden of Winchester, master of the Charter House, principal of St. David's or King's College, London. And every such spiritual person shall, with respect to residence on a benefice under the Act, be entitled to account the time in any year, during which he shall be so as aforesaid resident, engaged or performing duties, as if he had legally resided during the same time on some other benefice. Sect. 38. Any prebendary, canon, priest, vicar, vicar-choral, or minor canon of any cathedral or collegiate church, or fellow of Eton or Winchester, may account the period of his residence and performance of the duties required by the charter or statutes as residence on some benefice ; but the absence on account of such residence and performance of duty is not to exceed five months in one year, including the time of the residence on his prebend, &c. If the year of residence in any such cathedral or college be accounted to commence at any other period than the 1st of January, and if the person holding any such office keeps the period of residence required for two successive years, in whole or in part, between the 1st of January and 31st of December in any one

year, he may account such residence, although exceeding five months in the year, as reckoned from the 1st of January to the 31st of December, as if he had resided on some benefice. Sect. 39.

Repairing Residence.] Every spiritual person having a house of residence and not residing, is to keep it in repair; and if he fail to repair within ten months after monition from the bishop, he is to be liable to the penalties for non-residence so long as the house remains out of repair. Sect. 41.

Licence, how obtained.] Every applicant for a licence for non-residence must present a petition in writing to the bishop, signed by himself or by some person approved by the bishop; and the petition must state—1. Whether the applicant is to perform the duty in person, and if so, where and at what distance from the church or chapel he intends to reside. 2. If he intends to employ a curate, and at what salary; and whether the curate proposes to reside or not. 3. If the curate is to reside, whether in the house of residence or in what other house; if he does not intend to reside in the parish, at what distance from it, and at what place; and whether such curate serves any other and what parish as curate or incumbent, or has any or what cathedral preferment, and any or what benefice, or officiates in any other and what church or chapel; the annual value and population of the benefice in respect of which the licence is applied for, the number of churches and chapels therein, and the date of the applicant's admission: no licence is to be granted unless these particulars are stated; the petition is to be duly filed by the registrar, to be open to inspection by leave of the bishop. Sect. 42.

Upon such petition being presented, and such proofs adduced as he may require, the bishop may grant a licence in writing, under his hand, for such person to reside out of the proper house of residence, or out of the limits of the benefice, or out of the limits prescribed by the Act; and the licence is to express the cause of granting it, which may be—

1. On account of incapacity of mind or body.
2. For six months, and only to be renewed with the allowance of the archbishop under his hand, on account of the dangerous illness of wife or child, making part of his family, and residing with him.
3. On account of there being no house of residence, or the house being unfit for residence, such unfitness not being caused by the

negligence, default or misconduct of the petitioner, he keeping the house, &c., in good repair. A certificate under the hands of two neighbouring incumbents, countersigned by the rural dean, must be produced to the bishop that no convenient house can be obtained in the parish, or within the precincts prescribed by the Act.

4. On account of occupying in the same parish a mansion whereof he is owner, he keeping the house of residence in good repair, and producing to the bishop proof of such house of residence, &c., being in good repair at the time of granting the licence.

If the licence be refused there is an appeal to the archbishop. Sect. 43.

The bishop may grant a licence to reside out of the benefice in cases not enumerated in sect. 43; but in every such case the nature and special circumstances thereof and the reasons of the bishop must be sent to the archbishop, who may allow or disallow the licence, in whole or in part, or alter the period for which it is granted; and it is not to be valid till signed by him. Sect. 44.

In case of a vacancy of the see or disability of the bishop, licences may be granted, in the former case, by the guardian of the spiritualities of the diocese, and in the latter by the person lawfully empowered to exercise the general jurisdiction; but licences so granted are not to be valid until signed by the archbishop. Sect. 45.

No licence is to be void by the death or removal of the grantor. Sect. 48.

Fees.] A fee of 10*s.* is payable to the officer of the bishop or other grantor, above the stamp duty; 3*s.* to the registrar of the diocese, and 5*s.* to the secretary of the archbishop, if the licence is signed by him. Sect. 47.

Revocation.] Any archbishop or bishop who has granted a licence, or his successor, may, by writing under his hand, revoke the same if there appear good cause. But the incumbent must have sufficient opportunity of showing reason to the contrary, and may appeal to the archbishop within one month after service of the revocation. Sect. 49. *Bagshaw v. Basely*, 4 T. R. 78.

Registry, &c.] Sections 50 and 51 contain provisions for filing copies of licences and revocations in the registry of the diocese, and keeping a list for inspection; also for transmission of copies to the churchwardens, to be kept by them and publicly read at the first visitation; also for the transmission of the list of licences

granted or allowed by the archbishop to her Majesty, who may revoke the same.

What is House of Residence.] Houses purchased by the governors of Queen Anne's Bounty, if approved by the bishop, by writing under his hand and seal duly registered, are to be deemed houses of residence, though not situate within the parish where the benefice lies. Sect. 34. And in all cases of rectories having vicarages endowed or perpetual curacies, the residence of the vicar or perpetual curate in the rectory house is to be deemed a legal residence, if the house belonging to the vicarage or perpetual curacy be kept in proper repair to the satisfaction of the bishop. Sect. 35.

Return of Residents.] By sect. 52, each bishop is required to transmit, in the month of January in each year, certain questions [for these questions see the Schedule] to every incumbent within his diocese, to which full and specific answers must be sent within three weeks of the delivery of such questions, signed by such incumbent. This is in order to enable the bishop to make the annual return to her Majesty of residents and non-residents required by sect. 53.

Monition.] Where it shall appear to any bishop that any holder of a benefice, having neither exemption or licence, does not sufficiently reside thereon within the meaning of the Act, the bishop may, instead of proceeding for penalties under this Act, or 57 Geo. 3, c. 99, or after proceeding for the same, issue a monition, requiring him to reside forthwith and to perform the duties, and to make a return to the monition within a certain number of days; but there must be thirty days between the time of serving such monition and the time of the return thereof. Sect. 54.

The monition need not be preceded by any citation. *Bartlett v. Kirwood*, 2 E. & B. 771.

Order to Reside.] The bishop may require any fact in the return to be verified by evidence [see mode of verification, sect. 123]; where no return is made, or is unsatisfactory or not verified when required, the bishop may issue an order, under his hand and seal, requiring such person to reside within thirty days after service of such order, in like manner as directed with respect to the service of monitions. *Ibid.*

Sequestration.] If such order be not complied with, the bishop may sequester the profits of the benefice until it is complied with,

or sufficient reason for non-compliance proved, such profits to be applied as there provided. There is an appeal to the archbishop within one month of service of the order of sequestration, but the sequestration is to be in force during the appeal. *Ibid.* See *Bartlett v. Kirwood*, 2 E. & B. 771, as to the mode of proceeding under this section.

The bishop, in issuing the monition, may determine the fact of residence and the sufficiency of the excuse for non-residence, and a prohibition will not be issued to question his decision, the remedy being by appeal. *Re Bartlett*, 3 Exch. 28. Imprisonment for crime is no legal ground of exemption from residence. *Ibid.*

Profits, Costs, &c.] There are further provisions as to the application of the profits by the bishop or archbishop, if there is an appeal; and by sect. 55, with respect to costs of the monition or order, which are to be paid by the incumbent, if by obeying the order he avoids the sequestration, and the proceedings are not to be stayed till payment is made.

Renewed Absence.] By sect. 56, if any spiritual person, not having a licence of non-residence or lawful cause of absence, shall, in obedience to such order, have begun to reside, and before twelve months next after the commencement of such residence, wilfully absents himself for one month together, or to be accounted at several times, the bishop may, without further monition or order, sequester according to sect. 54, and may so proceed from time to time, subject to an appeal as by sect. 54. See *Bonaker v. Evans*, 16 Q. B. 162.

Benefice, when void.] By sect. 58, if a benefice continue for one whole year [calculated from the issuing of the sequestration; *Bartlett v. Kirwood*, 2 E. & B. 771] under a sequestration issued under this Act for disobedience of the bishop's order to reside, or if two such sequestrations be incurred by any spiritual person, and be not relieved, with respect to either of them, by appeal, the benefice becomes void, and the patron may present as if the incumbent were dead. See *Re Bartlett*, 12 Q. B. 488; 3 Exch. 28.

Remission of Penalty.] When the archbishop or bishop, after proceeding by monition for recovery of any penalty under the Act for non-residence of more than one third part of the yearly value of any benefice, for non-residence exceeding six months in the year, thinks proper to remit the whole or any part of such penalty, a statement of the nature of the case and the reasons must be trans-

mitted by the bishop to the archbishop, or by the archbishop to her Majesty, who may allow or disallow such remission. Sect. 57.

Jurisdiction.] Where by the Act jurisdiction is given to the bishop or archbishop, all concurrent jurisdiction is to cease. Sect. 109.

Penalties.] All penalties and forfeitures are to be sued for only in the court of the bishop of the diocese, and by some person duly authorized by him under hand and seal [see *West v. Turner*, 6 A. & E. 614]; and payment is to be enforced by monition and sequestration. There are further provisions as to the application of the penalties, the recovery of fees, costs, &c. Sect. 114. No penalty can be recovered which has not been incurred subsequently to the 1st of January in the year preceding the year in which proceedings are commenced. Sect. 118. For the purpose of a prosecution, it is sufficient to prove that the defendant assumed to be and acted as parson, without proving admission, institution, and induction. *Bevan v. Williams*, 3 T. R. 535, n.

Computation of Time.] For the purposes of the Act, except where otherwise provided, the year is to commence on the 1st of January, and be reckoned to the 31st December. Sect. 120. See *Sharpe v. Bluck*, 10 Q. B. 280.

Benefice.] As to the meaning of this term, see *ante*, p. 86.

SECTION III.—VICARS.

Origin of.] A vicar is one that has spiritual promotion or living under the parson. 4 *Burn, Ecc. L.* 9. Endowments of vicarages were for the most part made upon the appropriating of churches to religious houses, &c., and upon the appropriation they usually assigned some small portion of the rectory to maintain a perpetual vicar to serve the cure, and took the rest to the use of the abbey. And the vicar was so called, as being *vice rectoris*, there being no rector to serve the cure. But in process of time the abbots, &c., grew better husbands, and took the whole rectories to themselves without endowing any vicar, and served the cures with their own monks and friars, by which means hospitality was neglected, and the churches and rectory houses dilapidated, and the minister often wanting. Whereupon the 15 Ric. 2, and 4 Hen. 4, c. 12, were passed, for making void such appropriations of vicarages as were made without competent endowment, and likewise against such

appropriations. *Rogers, Ecc. L.* 892, n., citing *Degge*, 161 ; *Ayliffe Parerg.* 510. At the Reformation, whatever interest the religious communities possessed in the parishes was seized by the Crown, and has since been either retained by it, or, as has usually been the case, has been sold to private persons, whence arises the class of *lay impropriators*, who are, in fact, the rectors of the parish, the performance of the spiritual duties devolving on the vicar.

Vicarage.] Ordinarily speaking, a vicarage is a part or portion of the parsonage allotted to the vicar for his support. This part is in some parishes a sum certain, but generally that part of the tithes which is called the small tithes. In some places the vicar has a portion of the great tithes and the glebe, and this is a vicarage endowed. In some places vicarage lands occupied by the vicar pay no tithes to the parson. *Godol. Ab.* 197. No tithes or profits of any kind *de jure* belong to the vicar, but only by endowment or prescription, which cannot be presumed, but must be shown by the vicar. *Gibs.* 753. The rector or parson is, *primâ facie*, entitled to all the tithes ; therefore, payment to him is a discharge against the vicar. *Green v. Austin*, Gwill. 226. The loss of the original endowment may be supplied by prescription ; and if the vicar has enjoyed any particular tithe for a long time, the law will presume that he was legally endowed of it, or is entitled to it by augmentation, which the bishop has a clear right to make. See *Hiscock v. Wilmot*, Gow. 197.

The vicar of a parish has not, as vicar, the right of presentation to any consecrated public chapel in his parish, unless such chapel is a chapel of ease ; but he has the right to forbid any person to officiate therein, unless deprived of such right by some statute or some arrangement assented to and binding on the bishop of his diocese, the patron of the mother church and the incumbent thereof. *M'Allister v. Bishop of Rochester*, L. R. 5 C. P. D. 194 ; 49 L. J. C. P. 114.

By 31 & 32 Vict. c. 117, s. 2, all incumbents of parishes having cure of souls, and not being rectors, shall, for the purposes of style and designation only, be deemed to be vicars.

SECTION IV.—CURATES.

Definition of Curate.] The word curate is of ambiguous signification. Most properly, it denotes the incumbent in general, who

hath the cure of souls, but it is commonly understood to signify a clerk not instituted to the cure of souls, but exercising the spiritual office in a parish under the rector or vicar. *Arthington v. Bishop of Chester*, 1 H. Bl. 424. We shall consider it in the latter sense.

There are two kinds of these curates : first, temporary, who are employed under the spiritual rector or vicar, either as assistants or substitutes in his absence, in the parish church or in a chapel of ease within the parish ; the other called perpetual curates, which is where there is neither spiritual rector nor vicar in the parish, but a clerk is employed to officiate there by the impropriator. 2 *Burn's Ecc. L.* 54.

Appointment of.] The appointment of a curate to officiate under an incumbent in his own church must be by such incumbent's nomination, under hand and seal to the bishop, setting forth the stipend for his maintenance. *Arnold v. Bishop of Bath and Wells*, 5 Bing. 316 ; see *Capel v. Child*, 2 Tyr. 700. The appointment also of a curate in a chapel of ease seems most properly to belong to the incumbent of the mother church, who is instituted to the cure of souls throughout the whole parish. *Dixon v. Kershaw*, Amb. 528. The form of nomination in this latter case, and to a perpetual curacy, is much the same. It, of course, states the vacancy by death or otherwise, and prays the bishop's licence for the curate nominated. 2 *Burn's Ecc. L.* 57.

Primâ facie all parochial duties are committed to and imposed upon the parish incumbent ; and all fees and emoluments arising therefrom belong to him ; and such rights can only be granted to a chapel or its officiating minister, by composition with the patron, incumbent and ordinary ; and it has been said that all three uniting will not be sufficient without a compensation to future incumbents ; though, where nothing is taken from the income of the incumbent, such consent may suffice without any such compensation being provided. *Moysey v. Hillcoat*, 2 Hagg. Rep. N. S. 48 ; *Farnworth v. The Bishop of Chester*, 4 Barn. & Cres. 568 ; *Dixon v. Kershaw*, Amb. 532.

Perpetual Curacies.] The origin of perpetual curacies was this : by the 4 Hen. 4, c. 12, it is enacted, that in every church appropriated there shall be a secular person ordained vicar perpetual, canonically instituted and inducted, and covenantably endowed. If the benefice was given *ad mensam monachorum*, and by way of union *pleno jure*, it was served by a temporary curate of their

own house as occasion required. And the like liberty was sometimes granted, by dispensation, in benefices not annexed to their tables, in consideration of the poverty of the house, or the nearness of the church. But when such appropriations, together with the charge of providing for the cure, were transferred, by the dissolution of the religious houses, from spiritual societies to single lay persons, who were not capable of serving them by themselves, they were obliged to nominate some particular person to the ordinary for his licence to serve the cure; the curates, by this means, became so far perpetual as not to be wholly at the pleasure of the appropriator, nor removable but by due revocation of the licence of the ordinary. *Gibs.* 819.

Nature of.] A perpetual curacy is an ecclesiastical benefice, so as to be untenable with any other benefice. See 1 & 2 Vict. c. 106, s. 124; *Burder v. Mavor*, 1 Robert. Ecc. R. 614. The grant of a rectory passes a perpetual curacy belonging thereto. *Arthington v. Bishop of Chester*, 1 H. Bl. 418.

A perpetual curate has an interest for life in his curacy, and can only be deprived by the bishop in due course of law. He stands, in many respects, in the same position as a vicar before the 4 Hen. 7, c. 12. A perpetual curate cannot lease land annexed to his curacy, so as to bind his successor, without the assent of the ordinary. *Doe d. Richardson v. Thomas*, 9 A. & E. 556.

The right to herbage in a churchyard may be vested in the lay impropriator and not in the perpetual curate, who may have possession of the churchyard for spiritual purposes only. *Greenlade v. Darby*, L. R. 3 Q. B. 421; 37 L. J. Q. B. 137.

In newly erected Benefices.] The churches built or acquired under the Church Building Acts, and appropriated to distinct parishes, are to be perpetual curacies, and considered as benefices presentative so far only that the licence thereto shall operate in the same manner as institution to any such benefice; and the incumbents thereof are to have perpetual succession, and be bodies politic and corporate, and may take endowments in lands, or tithes, or any augmentations granted to them; and all such incumbents and persons presenting them are to be subject to all jurisdictions and laws, and to lapse on neglecting to nominate an incumbent for six months, as in cases of actual benefices. 58 Geo. 3, c. 45, s. 25; 8 & 9 Vict. c. 70, s. 17.

No chapel built or acquired under the 58 Geo. 3, c. 45, in any district parish made so for ecclesiastical purposes under the Act,

and which shall not be made the church of such district, shall be a perpetual curacy or benefice, presentative under that Act. 59 Geo. 3, c. 134, s. 19.

Churches of district chapelries formed under these Acts are to be perpetual curacies and benefices, whether they have been or have not been augmented by Queen Anne's Bounty—8 & 9 Vict. c. 70, s. 17; and the like as to churches of separate parishes—2 & 3 Vict. c. 49, s. 8; and consolidated chapelries—8 & 9 Vict. c. 70, s. 9.

Election of.] The right to nominate to a perpetual curacy is sometimes vested in the parishioners, by custom, the terms and conditions of which must be observed in the exercise of the right; but the Courts are generally inclined to support a liberal interpretation of such customs, so as to admit the largest number of voters, rather than to abridge the privilege by a rigid construction of the language in which the custom is expressed.

Particular Customs to Elect.] By agreement of the bishop, patron and incumbent, the inhabitants may have a right to elect and nominate a curate; and there are instances in which, according to the custom, he is nominated by the inhabitants (as founders and patrons) to the vicar, and by him presented to the ordinary. In other cases, a curate is to be presented by the patron of the church to the vicar, and by him to the archdeacon, who is then obliged to admit him; in other places, the lord of the manor presents a fit person to the appropriators, who, without delay, are to give admission to the person so presented. *Ken. Par. Ant.* 589.

Lapse.] It is not necessary, in order to prevent a lapse, that the appointment be within six months, unless specially provided for by the founder; *Co. Lit.* 344; *Serjeant Hill's MSS.* notes; except in the case where there has been an augmentation from Queen Anne's Bounty. But the bishop may compel the patron, by spiritual censures, to make the appointment. 1 *Inst.* 344; *Gibs.* 819. This was so held in *Fairchild and Gayre*, Cro. Jac. 63, with regard to donatives; and it holds more strongly in the case of curacies, where both church and patron are subject to the ordinary's jurisdiction, and where, therefore, he may likewise sequester the profits and appoint another to take care of the cure till the patron shall nominate a fit and proper clerk. *Gibs.* 819.

Curates must be licensed.] By canon 48, no curate or minister shall be permitted to serve in any place without examination and

admission of the bishop of the diocese, or ordinary of the place having episcopal jurisdiction, under his hand and seal, having respect to the greatness of the cure and meetness of the party. The object of this canon seems to be, that curates, who are engaged to take charge of parishes, either altogether or in part, for a continued time, shall be examined and admitted by the diocesan. But a clerical person, who officiates for the rector occasionally, if not so licensed by the bishop of the diocese, does not, it seems, incur ecclesiastical censures under this canon; nor is he thereby rendered unable to recover his stipend. *Dakins v. Seaman*, 9 M. & W. 777. If he has a licence to preach, which need not be had of the local ordinary, it is considered sufficient; and such licence to preach under the 50th and 52nd canons must be deemed to be contained in his letters of orders. *Gates v. Chambers*, 2 Add. R. 177.

It must also appear that he is in deacon's orders at least, if he is to be licensed to be an assistant curate, and in priest's orders, if he is to be licensed to a perpetual curacy; for, by the 13 & 14 Car. 2, c. 4, s. 14, no person shall be admitted to any benefice or ecclesiastical promotion before he shall be ordained priest. Which words extend to all chapels of ease which have received the augmentation of Queen Anne's Bounty, as they are thenceforth to be perpetual cures and benefices. 2 *Burn's Ecc. L.* 62.

By canon 48, if curates remove from one diocese to another, they shall not be, by any means, admitted to serve, without testimony in writing of the bishop of the diocese, or ordinary of the place having episcopal jurisdiction, from whence they came, of their honesty, ability and conformity to the ecclesiastical laws of the Church of England. See *Lind.* 48; *Gibs.* 896.

As to the subscription and oaths to be taken on being licensed to a perpetual curacy, see *ante*, p. 73.

Appointment of Stipendiary Curates.] The law respecting the appointment of curates in case of non-residence or neglect of the incumbent, their stipend and other matters, is regulated by the 1 & 2 Vict. c. 106, and 28 & 29 Vict. c. 122.

In case of Non-residence.] By this Act, if any spiritual person holding any benefice who does not actually reside thereon nine months in each year, shall for three months, altogether or at several times in one year, absent himself from his benefice without leaving a curate or curates duly licensed or approved by the bishop to perform his ecclesiastical duties (unless with the consent of the

bishop he performs the duties, being resident in another benefice of which he is incumbent, or unless he has a legal exemption from residence on his benefice, or a licence to reside out of it, or out of the usual house of residence); or shall for one month after the death, resignation or removal of his curate neglect to notify the same to the bishop; or shall for four months after the death, &c., of such curate neglect to nominate to the bishop a proper curate, the bishop may appoint and license a proper curate with such a salary as is by the Act allowed. The licence must specify whether the curate is to reside within such parish or place, and, if he be permitted to reside out of the parish, &c., must specify the grounds of such permission; and the distance of the residence of the curate from the church shall not exceed three miles, except in cases of necessity, to be approved by the bishop, and specified in the licence. Sect. 75.

Whenever the incumbent does not reside, or has not satisfied the bishop of his full purpose to reside during four months in the year, the curate is to be required to reside within the parish or place, or if no convenient residence can be procured there, then within three miles of the church, except in cases of necessity, to be specified in the licence, with the place of residence. Sect. 76. The year of residence mentioned in these sections is that defined by sect. 120, *ante*, p. 94. See *Sharpe v. Bluck*, 10 Q. B. 280.

In case of Non-performance of Duties.] When the bishop sees reason to believe that the ecclesiastical duties of any benefice are inadequately performed, he may issue a commission of inquiry consisting of four beneficed clergymen within his diocese, or if the benefice be within his peculiar but in another diocese, then of four within such diocese, one of whom is to be the rural dean, and a fifth beneficed clergyman of the same diocese may be added by the incumbent; and if the major part of such commissioners shall report in writing that the duties are inadequately performed, the bishop may in writing (specifying the grounds of the requisition) require the holder of such benefice, though resident and performing the duties, to nominate a proper person as curate with a proper stipend to perform or assist in performing the duties. And if such holder of the benefice, for three months after the requisition, omits so to nominate, the bishop may appoint and license a curate or curates with a stipend not exceeding the respective stipends allowed in cases of non-resident incumbents, nor (except in case of negli-

gence) exceeding one-half of the net annual value of the benefice. The holder of the benefice may, within one month of the service of such requisition, or of the notice of such appointment, appeal to the archbishop. A copy of such requisition, and the evidence to found it, is to be filed in the registry. Sect. 77.

Assistant Curates in large Parishes.] If the annual value of a benefice of which the incumbent was not in possession at the time of the passing of the Act [14th August, 1838] exceeds 500*l.*, and the population amounts to 3000, or if there be a second church or chapel two miles distant from the mother church, with a hamlet or district containing 400 persons, the bishop may require the holder of such benefice, though resident and performing duty, to nominate a curate to be paid by him. And if no nomination is made within three months after such requisition has been delivered to the incumbent or left at his last usual place of abode, the bishop may appoint and license a curate with a stipend not exceeding the respective stipends allowed to curates by this Act, nor in any case exceeding one-fifth of the net annual value of the living. There is an appeal to the archbishop within one month of the service of the requisition, or notice of the appointment of the curate. Sect. 78.

Where an incumbent of a benefice [the population of which exceeds 2000], appointed since the 20th July, 1813, is not resident thereon—sect. 85—the bishop may require him to nominate two curates, and if for three months after such requisition he omits to make such nomination, the bishop may appoint and license two curates, or a second curate, and assign to each such curate a stipend, not exceeding together the highest stipend allowed in the case of one such curate, unless the incumbent shall consent to a larger stipend. The incumbent may, within one month after service upon him of such requisition, or notice of appointment of two curates or a second curate, appeal to the archbishop. Sect. 86.

Benefice under Sequestration.] Whenever a benefice is under sequestration, except for providing a house of residence, if the incumbent does not perform the duties, the bishop is required to appoint and license a curate or curates, and to assign a stipend or stipends not exceeding, in the case of one, the highest stipend allowed by the Act, nor, where more than one, exceeding 100*l.* to more than one such curate. More than one curate is not to be appointed, unless there is more than one church, or the population

exceeds 2000 persons. The stipend is to be paid by the sequestrators out of the profits of the benefice. Sect. 99.

Upon the avoidance of any benefice by death, resignation, or otherwise, the sequestrator appointed by the bishop is out of the profits to pay the curate during the vacancy, and in proportion only to the time thereof. But if the profits which come to the hands of the sequestrator during such vacancy are insufficient, then the remainder of the stipend unpaid is to be paid to the curate by the succeeding incumbent—payment to be enforced by monition and sequestration. Sects. 100, 101.

Lunatic Incumbent.] In case of the incumbent being duly found of unsound mind, the curate's stipend assigned by the bishop is to be paid by the committee of the estate. Sect. 79.

Application for Licence.] Every bishop, before licensing a curate to serve for any person not duly residing on his benefice, is to require a statement of all the particulars required by the Act to be stated by any person applying for a licence for non-residence. See *ante*, p. 90.

Declaration by Stipendiary Curate.] Every person about to be licensed to a stipendiary curacy is, before obtaining such licence, to present to the archbishop or bishop by whom the licence is to be granted the stipendiary curate's declaration, signed by himself and by the incumbent of the benefice to which he is about to be licensed. 28 & 29 Vict. c. 122, s. 6. The declaration referred to is as follows:—

“I, A. B., incumbent of _____, in the county of _____, *bond fide* undertake to pay to C. D., of _____, in the county of _____, the annual sum of _____ pounds as a stipend for his services as curate, and I, C. D., *bond fide* intend to receive the whole of the said stipend.

“And each of us, the said A. B. and C. D., declare that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe house; and that I, A. B., undertake to pay the same, and I, C. D., intend to receive the same without any deduction or abatement whatsoever.”

Every person licensed to a stipendiary curacy is, in the presence of the archbishop or bishop by whom he was licensed, or of the commissary of such archbishop or bishop (unless having been ordained on the same day, he has already made and subscribed the same), to make and subscribe the declaration of assent (see *ante*, p.

73), and on the first Sunday on which he officiates in the church, or in one of the churches in which he is licensed to serve, publicly and openly make the declaration of assent in the presence of the congregation and at the time of divine service. Sect. 8. If he wilfully fails to do so, his licence is void. Sect. 8.

Licence and Revocation.] A bishop may license any curate actually employed by any non-resident incumbent without an express nomination being made to him. And he may summarily revoke any curate's licence, and remove him for any reasonable cause, having first given him an opportunity of showing reason to the contrary. The curate may appeal to the archbishop within one month after service on him of the revocation. Sect. 98. If the archbishop annul the revocation, the bishop is to make such order as is required in the case of the revocation of a licence of non-residence being annulled. *Ante*, p. 91. A copy of every curate's licence or revocation is to be entered in the registry of the diocese, and another copy sent to the churchwardens of the parish or place, and a list of such licences and revocations is to be kept open for inspection on payment of a fee of 3s. Sect. 102.

Fees.] By sect. 82, 10s. for the licence is to be the only fee over and above the stamp duty. Where a curate is licensed to two curacies at the same time, he need only sign the declaration required by the Act of Uniformity once, and need only produce one certificate of having so signed.

Stipend.] The bishop is to appoint to every curate of a non-resident incumbent such stipend as is specified by the Act; and whether the incumbent be resident or not, every licence is to specify the amount of the stipend. And the bishop is to hear and determine without appeal any differences between the incumbent and curate relating to the stipend, and, in case of wilful neglect or refusal to pay, may enforce payment by monition and sequestration. Sect. 83.

The scale of stipends of curates of non-resident incumbents instituted to benefices is as follows:—

In no case less than 80*l.*, or the annual value if less than 80*l.*

If the population amounts to 300, 100*l.*, or the annual value if less than 100*l.*

If the population amounts to 500, 120*l.*, or the annual value if less than 120*l.*

If the population amounts to 750, 135*l.*, or the annual value if less than 135*l.*

If the population amounts to 1000, 150*l.*, or the annual value if less than 150*l.* Sect. 85.

If the annual value exceed 400*l.*, and the curate be resident and have no other cure, the bishop may assign 100*l.* as a stipend, though the population be not 300; and if it be 500, may add 50*l.* to the stipend required by the Act. Sect. 86.

The bishop may assign a less stipend than before mentioned, with the consent of the archbishop in writing upon the licence, in cases where the incumbent is non-resident, or has become incapable of performing the duty by age, sickness or other unavoidable cause. In such case the licence must state the special reasons for the lower stipend, and they must be entered in a separate book to be kept for that purpose in the registry of the diocese. Sect. 87.

If an incumbent having two benefices, and *bond fide* residing on each during proportions of the year, employ a curate to do the duty interchangeably with himself, such curate is to have a stipend not greater than is allowed for the larger of the benefices, nor less than that allowed for the smaller. If such incumbent employ a curate or curates for the whole year on both benefices, the bishop may assign to each or either any such stipend, less than the amount specified by the Act, as he shall think fit. Sect. 88.

If the bishop finds it expedient to license any incumbent to serve any adjoining or other parish or place as curate, or to license the same person to serve as curate for two parishes or places, he may assign stipends less by 30*l.* than the stipends required by the Act. Sect. 89.

Remedy for Stipend.] By sect. 109, for the enforcing the due provisions of the Act, and for the purposes and the due execution of the provisions thereof, all other and concurrent jurisdiction shall wholly cease, and no other jurisdiction in relation to the provisions of the Act shall be used, exercised, or enforced, save and except such jurisdiction of the bishop or archbishop under this Act, anything in any Act or law, or usage or custom to the contrary notwithstanding.

Fraud as to Stipend.] All agreements made between incumbents and their curates in fraud or derogation of the provisions of the Act, and all agreements by which a curate shall bind himself to accept a stipend less than that assigned in the licence, are to be void to all intents and purposes, and not to be pleaded or given in evidence in any court of law or equity. The curate and his repre-

sentatives are to be entitled to the full stipend assigned by the licence, notwithstanding the payment and acceptance of any less sum, or any receipt, discharge or acquittance given for the same; and payment of so much thereof as shall be proved to be unpaid, with full costs, as between proctor and client, is to be enforced by monition and sequestration, provided the application be made within twelve months after such curate shall have quitted the curacy, or have died. Sect. 90.

Deductions from Stipend.] Where the stipend is equal to the whole annual value, all charges and outgoings which legally affect the value are to be deducted from it, as well as any loss or diminution which may lessen the value without the default or neglect of the incumbent. Sect. 91. And in such cases the bishop may allow the incumbent to retain such sum, not exceeding one-fourth of the annual value, as shall have been expended during the year in repairs of the chancel or house of residence; and also, when the annual value does not exceed 150*l.*, to deduct from the stipend such sum so expended above the amount of the surplus remaining of such value after payment of the stipend, provided such sum so deducted does not exceed one-fourth part of the stipend. Sect. 92.

Residence may be assigned.] Where an incumbent does not reside for four months in each year, and the bishop requires the curate to reside in the house of residence, he may assign to him the house, gardens, offices, stables and appurtenances, without payment of rent, and also any glebe land adjacent to the house, not exceeding four acres, at a rent to be fixed by the archdeacon or rural dean and one neighbouring incumbent, and approved by the bishop, during the curate's service or the incumbent's non-residence. If possession of the premises so assigned be not given up to the curate, the bishop may sequester the benefice until possession shall be given, and may direct the application of the profits of the benefice, as in cases of sequestration for non-residence, or may remit the same or any part thereof. Sect. 93.

Taxes, &c.] Where the bishop directs that the curate shall reside in the house of residence, in addition to a stipend not less than the whole value, such curate, during the time of his serving such cure, is to be liable to the same taxes, parochial rates and assessments in respect of such house, &c., as if he had been incumbent. In every other case in which the curate shall so reside, the bishop may order the incumbent to pay the curate any sums which he

may have been required to pay and shall have paid, within one year ending at Michaelmas next preceding such order, for any such taxes, &c., as become due after the passing of the Act, payment to be enforced by monition and sequestration. Sect. 94.

Removal of Curate.] Every curate is to give up the cure of any benefice becoming vacant and to quit the house of residence, on receiving six weeks' notice given him by the new incumbent within six months of his admission, collation, institution, or licence. In other cases, the incumbent, whether resident or non-resident, having obtained permission under the hand of the bishop, may require any of his curates to quit his curacy and the house of residence, &c., upon six months' notice thereof, and in the case of the house of residence, &c., the bishop may alone give such notice.

In the event of the bishop refusing permission to give notice to quit the curacy, and the incumbent being resident or wishing to reside, there is an appeal to the archbishop. But there is no appeal in the event of the bishop refusing permission to give notice to quit the house. If the curate, having duly received notice, shall refuse to deliver up such premises, or any of them, he is to forfeit 40s. for every day of wrongful possession after service of the notice. Sects. 95 and 96.

By 1 & 2 Vict. c. 107, s. 13, in the case of district churches and chapelries, the licence of the stipendiary curate is not to be rendered void by the avoidance of the church of the parish in which the chapel is, unless revoked by the bishop under his hand and seal.

No curate is to quit his curacy until after three months' notice given to the incumbent and the bishop, unless with the consent of the bishop under his hand, on pain of paying to the incumbent a sum not exceeding the amount of the stipend for six months, to be specified under the hand of the bishop. This sum may be retained out of the stipend, if any part thereof remain unpaid, or if it cannot be so retained, may be recovered by action of debt. 1 & 2 Vict. c. 106, s. 97.

Third Service.] By 58 Geo. 3, c. 45, s. 65, the bishop is enabled to require a third service to be performed, and to appoint a curate for that purpose, and to provide a mode for the payment of his stipend. See *ante*, p. 73.

SECTION V.—CHURCHWARDENS.

Office of Churchwardens.] Churchwardens are the guardians or keepers of the church, and representatives of the body of the church. They must be ratepayers and householders in the parish, and are, in favour of the church, for some purposes, a kind of corporation, being enabled, by that name, to have a property in goods and chattels, and to bring actions for them—1 *Bla. Com.* 394; *Gibs.* 243; whether the goods were taken in their own time or that of their predecessors. 2 *Will. Saund.* 47 c. They may take money or things by legacy, gift, &c., for the benefit of the church. *Att.-Gen. v. Ruper*, 2 P. Wms. 125. But one churchwarden cannot singly dispose of the goods of the parish—*Cro. Car.* 234; nor both without the consent of the parishioners. 1 *Roll. Ab.* 393; 1 *Vent.* 89; *Yelv.* 173. Nor have they *virtute officii* the custody of the title deeds of the advowson, though they are kept in a chest in the church, as they are not the goods of the church. *Gardener v. Parker*, 4 T. R. 351. In parishes maintaining their own poor, they are *ex officio* overseers of the poor—43 Eliz. c. 2, s. 1; and of the vestry appointed under the 18 & 19 Vict. c. 120.

Who may be elected.] Churchwardens are usually two in number; but a custom that there shall be only one churchwarden may be good—*R. v. Catesby*, 2 B. & C. 817; *Woodcock v. Gibson*, 4 B. & C. 463; *Gibbs v. Flight*, 16 L. J. Ch. 136; and, although it has been said that the parishioners may choose and trust whom they think fit, without limitation—*Morgan v. Archd. of Cardigan*, 1 Salk. 166—yet this doctrine must not be taken to be correct in its largest sense; for, although it is the duty of the ordinary not to make slight objections, he is bound to take care that an election, in his opinion void in itself, should have no legal effect; and this is a duty which he owes to the parish and to the general law of the country. *Anthony v. Seger*, 1 Hagg. R. 11. Therefore, if a parish return an alien, a Papist, or a Jew, or a child of ten years of age, or a person convicted of felony (none of whom are qualified for the office), says Sir W. Scott in that case, “I conceive the ordinary would be bound to reject.” But poverty is not a disqualification; and therefore where, to a *mandamus* to swear in a churchwarden, the return was, that he was *pauper lactarius*, et

servus minus habilis (a poor dairyman, and unqualified for the office), the Court held the return insufficient, and a peremptory *mandamus* issued; for it is at the peril of the parishioners who elect him, if he misconduct himself. *Morgan v. Archd. of Cardigan*, 1 Salk. 166; *R. v. Simpson*, 1 Stra. 610.

Who are exempt.] The exemptions from serving this office include peers of the realm, members of Parliament, and clergymen—*Gibs.* 215; Roman Catholic clergy—31 Geo. 3, c. 32; dissenting ministers—1 Will. 3, sess. 1, c. 18; 52 Geo. 3, c. 155, s. 9; barristers and solicitors—*Com. Dig.* “*Attorney*,” clerks in Court—1 *Roll. Rep.* 368; physicians, surgeons, being freemen of the city of London; medical practitioners registered under 21 & 22 Vict. c. 90, s. 35; apothecaries, having served seven years; and persons living out of the parish, although they occupy lands within it. *Gibs.* 215; 18 Geo. 2, c. 15; 6 & 7 Will. 3, c. 4. But if they occupy a house of trade there, although they take their meals and sleep in another parish, they are liable. *Stephenson v. Langston*, 1 Hagg. R. 379. In this case the defendant was chosen sheriff of another county pending the suit, which the Court held would exonerate him, though he was condemned in the costs. Each of three partners in trade has been held liable to serve as a householder within the 43 Eliz., although no one of them resided on the premises. *R. v. Poynder*, 1 B. & C. 178; 2 D. & Ryl. 258. All persons in the regular militia are exempt. 38 & 39 Vict. c. 69, s. 95, and men enrolled in and officers and non-commissioned officers appointed to the army and navy reserve forces. 30 & 31 Vict. c. 110; 16 & 17 Vict. c. 73, s. 8; and naval volunteers 22 & 23 Vict. c. 40, s. 7; post-office officials, and registrars of births, deaths, and marriages—7 Will. 4 & 1 Vict. cc. 33 and 22; and commissioners and officers of Excise, Customs, or Inland Revenue. 39 & 40 Vict. c. 36, s. 9; 7 & 8 Geo. 4, c. 53, s. 11; 16 & 17 Vict. c. 69, s. 17. Dentists registered under 41 & 42 Vict. c. 33, need not serve unless they desire to do so. Sect. 30. Inspectors of factories are exempt. 41 Vict. c. 16, s. 67. A quaker will not be compelled to serve. *Adey v. Theobald*, 1 Curt. 447.

Serving by Deputy.] The Toleration Act (1 Will. & M. c. 18, s. 7) provides, that if any person dissenting from the Church of England be appointed to the office of churchwarden, or any other parochial office, and scruple to take the oaths, &c., he may execute the same by a sufficient deputy, to be approved in such manner as

the officer himself should by law have been allowed and approved ; and the same relief is extended to Roman Catholics by the 31 Geo. 3, c. 32, s. 7 ; 52 Geo. 3, c. 155 ; 34 & 35 Vict. c. 48.

When and by whom chosen.] The churchwardens shall be chosen the first week after Easter. *Canon 90.* And by Canon 89, the choice shall be made by the joint consent of the minister and the parishioners, if it may be ; but if they cannot agree, the parishioners shall choose one, and the minister another ; and a curate may stand in the place of minister for this purpose—*Hubbard v. Penrice*, 2 Stra. 1246 ; unless where the incumbent is under sentence of deprivation, in which case the right to elect both results to the parishioners. *Curth.* 118. Without such joint or several choice, none shall take upon themselves to be churchwardens. *Gibs.* 241.

In *The Churchwardens of Northampton's case*, *Curth.* 118, Holt, C.J., is reported to have said, "Of common right the choosing churchwardens belongs to the parishioners ; 'tis true, in some places, the incumbent chooses one, but that is only by usage ; and the canon concerning the choosing of churchwardens is not regarded by the common law ; this was the opinion of Lord Hale. See *Dawson v. Fowle*, Hardr. 378." But in *Slocombe v. St. John*, tried at the Croydon Summer Assizes, 1829, which was an issue to ascertain whether the right of election was in the parishioners in exclusion of the minister, in support of the affirmative, the above decision in *Curthew* was quoted, and on the other side 1 *Burn's Ecc. L.* 401, and the authorities there collected were relied upon, and it was held by Parke, J., that in general the minister and the parishioners are to choose the two churchwardens, and if they do not concur, then the minister is to choose one and the parishioners the other ; and though the evidence established that, generally, for upwards of two hundred years, the minister and parishioners concurred, and there was no evidence that the minister had ever separately appointed one, this was not enough to support a supposed custom in exclusion of the minister, because their long concurrence was not sufficient to affect the general right.

Where the right of appointing exists in the parishioners, it is to be exercised in vestry assembled ; and the parson cannot intermeddle in the election. *Stoughton v. Reynolds*, 2 Stra. 1045.

By Custom.] By custom, both may be chosen by the parishioners without the parson—2 *Roll. Abr.* 234 ; *Warner's case*, Cro. Jac.

532; or by a select vestry, or a particular number of the parishioners. *Dawson v. Fowle*, Hard. 379; 1 Mod. 181. As to the validity of a custom to elect churchwardens, see *Bremner v. Hull*, L. R. 1 C. P. 748; 35 L. J. C. P. 332; and *Green v. The Queen*, L. R. 1 App. 513.

Mode of Election.] The churchwardens, whose office is about to expire, are properly the returning officers at such elections; but it is not indispensably necessary that the Court should be informed by this method where an election is disputed, provided satisfactory information of the election be given in any other way. *Anthony v. Seger*, 1 Hagg. R. 9. If, after a show of hands, a poll is demanded, it destroys the previous voting by a show of hands, and everything anterior is not of the substance of the election nor to be so received, and consequently, where one of three candidates had many hands held up in his favour but afterwards did not poll any votes, he could not be taken as elected upon one of the persons returned being afterwards found ineligible.

As to the mode of voting in the election of churchwardens, see *post*, VESTRIES, Chap. VI., and the cases there cited.

In new Churches.] The Legislature, in the Church Building Acts, has proceeded upon the same principle as the canon. By the 58 Geo. 3, c. 45, s. 73, two fit persons are to be appointed churchwardens for every church or chapel built or appropriated under the Act, at the usual period of appointing parish officers in every year, one by the incumbent and the other by the inhabitant householders in the district, and to be admitted and sworn according to law. They are to receive the rents of the pews and seats, pay their stipends to the minister and clerk, and do all acts requisite for the repairs, management, and good order in the church or chapel; and to continue in office till others be chosen; and, on non-payment of the rents of seats and pews, they may enter upon and sell the same, or recover them by action, in the names of "The Churchwardens of the Church or Chapel of" [describing the same], without specifying their own names; and no such action shall abate by their death or going out of office. And, by section 74, churchwardens of every parish in which any additional chapel is built or provided under the Act, without making any division thereof into separate parishes or district parishes, are to do all such things as churchwardens to be appointed under the Act are authorised and required to do.

By the 8 & 9 Vict. c. 70, s. 6, two persons are to be appointed churchwardens for the church of every district chapelry or consolidated chapelry formed under these Acts, in the like manner and with similar duties. By sect. 7, in any new church, without a district, built upon a site conveyed to the Commissioners, two churchwardens are to be appointed annually, one by the minister and the other by the majority of the renters of pews; but if there are no rented pews in the church, both are to be appointed by the minister. If such church is made the church of a separate parish, district parish, district chapelry, or consolidated chapelry, the provisions of this and the former Acts touching the election of churchwardens are to apply to it.

By sect. 8, churchwardens appointed under this Act are not to be churchwardens for any other duties than those there specified. All other legal duties are to be performed by the churchwardens who would have discharged the same if the Act had not passed; and they are not to be deemed overseers of the poor. Though a district of an old parish appropriated to a new church under 58 Geo. 3, c. 45, the 6 & 7 Vict. c. 37, and the 19 & 20 Vict. c. 104, becomes a separate parish for all ecclesiastical purposes, yet, as it remains part of the old parish as to rates, the inhabitants of the district have a right to vote in vestry in the election of churchwardens for the old parish. *R. v. Stevens*, 32 L. J. Q. B. 90.

Double Return.] If there be a contest as to the right of making the election, and two sets of churchwardens be chosen in consequence, the commissary or ordinary, it is said, is bound to swear them all; and a *mandamus* lies to compel him to do so, in order that both parties may be made capable to try the right; but see *infra*. The right can only be determined in an action at law. *Williams v. Vaughan*, 1 W. Bl. 28; 2 Roll. Abr. 287.

Quo Warranto.] According to the principle laid down in *Darley v. The Queen*, 12 Cl. & Fin. 520, a *quo warranto* will, it seems, lie for the office of churchwarden, as it is a substantive office of a public nature. But the contrary was formerly held. See *R. v. Shepherd*, 4 T. R. 381; *R. v. Dawbeny*, 2 Stra. 1196. The Court will not grant a *quo warranto* on the ground of alleged irregularity in an election to a public office, unless the result of the election has been affected thereby. *R. v. Cousins*, L. R. 8 Q. B. 216 n. In a case where the churchwarden nominated by the rector was said to be not properly qualified, and it was desired to question

the validity of the appointment on this ground, it was said that the proper course would be to apply for a *mandamus* to the rector to nominate a churchwarden, and that a *quo warranto* would not lie for usurping the office of churchwarden. *Re Barlow*, 30 L. J. Q. B. 271.

Mandamus to Elect.] If the parishioners and minister neglect to choose churchwardens they may be compelled to do so by *mandamus*; *R. v. Wix*, 2 B. & Ad. 197; and the ordinary cannot interfere. Thus a prohibition was granted to the spiritual court, where the defendant was libelled against for not appearing to take the office of churchwarden, though thereunto appointed by the ordinary. And it was held, that, although the parishioners and parson neglect for ever so long to choose churchwardens, yet the ordinary hath no jurisdiction, for churchwardens are a corporation at common law. And it was said by the Court, the proper way is to take a *mandamus* out of the King's Bench. *Stutter v. Freston*, 1 Stra. 52.

In an *Anonymous case*, 2 Stra. 680, the Court of King's Bench refused to grant a *mandamus* to churchwardens to call a vestry in Easter week for the election of churchwardens, saying that there was no instance of such a *mandamus*, and they could not take notice who had a right to call the vestry, and, consequently did not know to whom it should be directed. See *Com. Dig. "Mandamus,"* (B.). But where the circumstances attending the election of one churchwarden by a vestry were such as to raise a suspicion that the proceedings were wholly void, and that there had in fact been no election, the Court granted a *mandamus*, calling on the rector and churchwardens to convene a vestry for the election of a churchwarden. If the election is void, said Lord Denman, there should be another, and if not, it is fit the parties should make a return to show how it is maintainable. *R. v. Birmingham*, 7 A. & E. 259. Where, however, the objection to an election which has taken place is that certain votes, alleged to be good, were rejected, the Queen's Bench will not interfere by *mandamus* to elect, but will leave the defeated candidate to try the validity of the election by *quo warranto*. *Ex parte Mauby*, 3 E. & B. 719.

Mandamus to Admit] If the ordinary refuse to admit a churchwarden, the Queen's Bench will grant a *mandamus* to compel him, though the validity of the election is disputed, and other parties claim to have been elected. *R. v. Archdeacon of Middlesex*, 3 A.

& E. 615 ; *Ex parte Duffield*, 3 A. & E. 617. The older authorities are somewhat at variance upon the question, whether to a *mandamus* to swear in a churchwarden, a return that the party was not elected, is good ; but, as he might try the validity of his election in an action for a false return, there does not appear any very strong reason against the decisions that such a return may properly be made. See *R. v. White*, 2 Ld. Raym. 1379 ; *Reg. v. Twitty*, 2 Salk. 433. All doubt upon the subject may, however, be considered as put at rest by the decision in *R. v. Williams*, 8 B. & C. 681, wherein Bayley, J., after an elaborate review of the cases touching the question, held, with the full concurrence of the rest of the Court, that a return stating that the party was not duly elected is good ; and Parke, J., said, “ The commissary may deny any material allegation in the writ. He cannot exercise any judicial authority, but he may inquire whether the party has been duly elected, otherwise he would be bound to admit any person who presents himself for admission, even if he knew the fact to be that such person was never elected. The party who obtains the *mandamus* states the foundation of his right in the writ. The commissary may deny it. In this case he has done it, by showing that the party who seeks to be admitted was not duly elected.” See also *Anthony v. Seger*, 1 Hagg. Rep. 10. Where it is contended that churchwardens have been improperly nominated or elected, the Court will not grant a *mandamus* unless it appear that a sufficient number of votes to turn the election have been rejected ; for it must be shown that the proceedings at the election were void, and that the result would have been different had the votes improperly rejected been received. *Ex parte Joyce*, 23 L. J. M. C. 23.

Must make a Declaration.] Since the 5 & 6 Will. 4, c. 62, s. 9, every person entering upon the office of churchwarden or sidesman, before beginning to discharge the duties thereof, is, in lieu of the oath of office, to make and subscribe in the presence of the ordinary or other person before whom the oath would have been taken, a declaration faithfully and diligently to perform the duties of his office. By the same section no churchwarden or sidesman is to take any oath on quitting office. This declaration is to be administered by the archdeacon or proper ordinary of the diocese. No fee can be demanded for doing this, or taking the presentments. *Goslin v. Ellison*, 1 Salk. 330.

Continuance in Office.] By the 89th Canon, churchwardens are

to continue in office one year, except they are again chosen in like manner. *Com. Dig. "Esglise,"* F. 1. But this refers only to the time when others should be appointed in their stead; for when once sworn in, they continue in office until their successors take the oath in like manner. *Canon* 118; *Bray v. Somer*, 31 L. J. M. C. 135.

Their Rights in Personal Property.] It has already been observed, that churchwardens are held to be a corporation at common law for some purposes. They may, in that capacity, purchase goods for the use of the parish; and may bring actions to recover the goods of the church, or for damages done to them. 1 *Burn's Ecc. L.* 408 a. But one churchwarden cannot dispose of such goods without the consent of the other; *Starkey v. Berton*, Cro. Jac. 234; nor both together, without the consent of the parishioners; for the goods belong to them, and the churchwardens can do nothing to the disadvantage of the church. 1 *Roll. Abr.* 393; 13 Hen. 7, 10, a; *Yelv.* 173; and 2 *Brownl.* 215. And the licence of the ordinary is said also to be necessary; therefore, if it is thought expedient to sell an old bell towards other repairs, or to dispose of old communion plate to buy new, or the like, the churchwardens cannot safely do it without first obtaining the concurrence of the above parties. But, although the goods belong to the parishioners, the churchwardens are the corporation in whom they are vested; consequently, if they improperly dispose of them, the parishioners cannot sue thereupon, either to recover them, or otherwise; but they must tarry till new churchwardens are chosen, who have a right to call their predecessors to account before the ordinary, and to commence a suit against them for any damage done the parish by their violation of the trust reposed in them. *Prid. Direct.* 78. And they may bring their action against their predecessors, for money remaining in their hands; and they are not bound to make all the present or late churchwardens plaintiffs or defendants. *Astle v. Thomas*, 2 B. & C. 271; 3 D. & Ryl. 492. Where an obligation is made to churchwardens and their successors, and they die, their executors shall have the action, and not their successors. *Vin. Ab. "Churchwardens,"* D. And although churchwardens and overseers are a corporation for some purposes, yet, not having a common seal, they cannot bind their successors by a covenant; *Furnival v. Coombs*, 5 M. & Gr. 736; 6 Scott, N. R. 522.

The churchwardens of every parish are *ex officio* overseers;

43 Eliz. c. 2, s. 1 ; and the same person may hold jointly the offices of churchwarden and overseer. 29 & 30 Vict. c. 113.

Their Rights in Real Property.] But their corporate character does not enable them to purchase lands, or to take by grant ; 12 Hen. 7, 29 a ; 1 Rol. Abr. 393, l. 10 ; except in London, where they are a corporation for those purposes also ; *Gibs.* 215 ; *Warner's Case*, Cro. Jac. 532 ; and, therefore, gifts of land to the parish for the use of the church should be to feoffees in trust for the use intended ; which should be from time to time renewed as the trustees die off ; and the churchwardens cannot grant leases of such lands, nor maintain trespass or other action for entry or taking possession of them. 12 Hen. 7, 29 a. A lease by them, though made with the consent of the vicar, the aldermen and burgesses of a borough, and other inhabitants of a parish, has been held to pass no interest in the lands, though the names were indorsed and rent had been regularly paid. *Doe v. Cochell*, 4 A. & E. 478 ; 6 Nev. & Man. 179 ; *Doe v. Terry*, 4 A. & E. 274. Nor can they prescribe to have lands to them and their successors. *Vin. Ab.* "Churchwardens," A.

They are, however, by the 9 Geo. 1, c. 7, s. 4, enabled, jointly with the overseers, with the consent of the major part of the parishioners or inhabitants in vestry, to purchase houses to lodge and employ the poor in ; and the 59 Geo. 3, c. 12, s. 17, enacts, that churchwardens and overseers shall take and hold, in the nature of a body corporate, for and on behalf of the parish, all buildings, lands and tenements belonging to the parish. But it was held that, in order to constitute the body corporate intended by this Act, there must be two overseers, and a churchwarden or churchwardens ; and that where there were two overseers appointed, one of whom was afterwards appointed, by custom, sole churchwarden, the Act did not vest parish property in them. *Woodcock v. Gibson*, 4 B. & C. 461 ; 6 D. & Ryl. 524. So a lease of parish land granted by churchwardens alone, is invalid. *Phillips v. Penree*, 5 B. & C. 433 ; 8 D. & Ryl. 43 ; see *post*, tit. OVERSEERS, Chap. XI.

Their Ecclesiastical Duties.] Churchwardens are the officers of the parish in ecclesiastical matters, as constables are in civil ; most of their duties will appear incidentally under different heads in the course of the work. The great changes in the manners and habits of the people have relieved churchwardens from the invidious task of enforcing the attendance of the people upon the services of

religion, and presenting those to ecclesiastical censures who absent themselves from church, as well as preventing the excommunicated from entering within its walls. But they are bound, and may occasionally have to exercise their authority, to preserve due decorum in the time of divine service. Thus, they may justify taking off the hat of a person who refuses to do so himself, upon request. *Hall v. Plunner*, 1 Lev. 197. Also they may exercise a reasonable discretion in directing where the congregation shall sit, and may remove a person from one seat to another, provided no unnecessary force be used, and the removal can be effected without public scandal or the disturbance of divine service. *Reynolds v. Monkton*, 2 M. & Rob. 384. In *Burton v. Henson*, 10 M. & W. 105, the churchwardens were held justified in removing a parish clerk who had been dismissed, but had taken possession of the clerk's seat before divine service had commenced, on the ground that they had reason to think he would offer interruption to the service, and was likely to create a disturbance. And they are, to a certain degree, the guardians of the moral character and public decency of their respective parishes. *Griffiths v. Reed*, 1 Hagg. Rep. N. S. 208. But it is questionable whether they can justify, in their own right, turning a person out of a church on a week day when no service is going on. *Worth v. Terrington*, 13 M. & W. 781. It seems that they have a right, in conjunction with the incumbent, to dispose of the alms collected at celebrations of Holy Communion, but are not entitled to interfere with the disposal of moneys collected in church at other times.

Churchwardens are required by the canons to see that curates are duly licensed by the bishop, and that strangers, unless duly qualified, shall not preach in the church. They are also to present the minister at the annual visitation for non-residence, or for irregular and incontinent living, or any other excess or irregularity calculated to bring disgrace upon the sacred office. 1 *Burn's Ecc. L.* 399.

If the minister introduces any irregularity into the service, the churchwardens have no authority to interfere; but they may and ought to repress all indecent interruption of the service by others; and they desert their duty if they do not. And if a case could be imagined in which even a preacher himself were guilty of any act grossly offensive, either from natural infirmity or from disorderly habits, it seems that the churchwardens, and even private persons,

may interpose, to preserve the decorum of public worship, but only in a case of instant and overbearing necessity which supersedes all ordinary rules. In cases which fall short of such a singular pressure, and can await the remedy of a proper legal complaint, and a private and decent application to the minister himself fails in preventing a repetition of the irregularity, the churchwardens may complain to the ordinary. *Hutchinson v. Denziloe*, 1 Hagg. R. 174.

Churchwardens may make a representation to the bishop under the Public Worship Act (37 & 38 Vict. c. 85) of illegal practices or omissions in church or burial-ground. See *ante*, p. 78. It seems that ornaments which have been illegally or irregularly placed in a parish church by the incumbent cannot be lawfully removed save under the sanction of the ordinary. *Ritchings v. Cordingley*, L. R. 3 A. & E. 113.

Churchwardens have a right of access to the church at proper seasons, but they are not entitled to the custody of the keys of the church. *Ibid.*

The powers conferred upon the churchwardens of a parish cannot be exercised by one of the churchwardens without the concurrence of his colleague. *Ibid.*

As to the duties of churchwardens in conducting parish meetings, see *Shaw v. Thompson*, L. R. 3 Ch. D. 233; 45 L. J. Ch. 822.

Duty as Sequestrators.] It is part of the office of churchwardens to have the care of benefices during their vacancy, whether by death of the incumbent or otherwise. Upon any such avoidance, they are to apply to the chancellor of the diocese for the sequestration of the profits thereof; and being thereupon authorised by instrument under seal, they are to manage the profits and expenses for the benefit of the successor. In this capacity they are to till the glebe, gather the tithes, and dispose of the produce at the best market, and do everything for the interest of the next incumbent. They are also to take care that the church be duly served by a curate, and to pay him out of the profits of the benefice such sum as the ordinary may fix, if applied to for the purpose. They are bound to account to the new minister when he is instituted; and if he is satisfied, and gives them a discharge, this concludes the matter. See 28 Hen. 8, c. 11. Although the churchwardens are the proper officers for this business, and are bound to perform it if required, yet the ordinary may confide the trust to others, willing to accept it. See *ante*, p. 81.

Presentments.] At the Easter visitation, when the churchwardens go out of office, and before their successors are sworn, they must make their presentments of all things amiss within their parish. 4 *Burn's Ecc. L.* 28.

Accounts.] At the end of their year of office, or within a month afterwards, the churchwardens must, before the minister and parishioners in vestry, present their accounts of receipts and disbursements; and if they are allowed, an entry in the church book of accounts should be made to that effect, which should be signed by the parties allowing the same; and the balance of money, if any remains in the hands of churchwardens, must be delivered over to their successors, with the goods, &c., of the church, according to the inventory, by bill indented. *Canon 89; 1 Burn's Ecc. L.* 411.

They are also bound to make up their accounts for the inspection of the auditor under the 7 & 8 Vict. c. 101, and if they wilfully authorise or make any illegal or fraudulent payment, or make any entry for the purpose of defraying any sum unlawfully expended or disallowed or surcharged, they are liable to a penalty of 50% and treble the amount of such payment. Sect. 32.

There is no general unqualified right on the part of the ratepayers to inspect and take extracts from the churchwardens' books of accounts. To entitle a ratepayer to a *mandamus* to compel such inspection, some special and public ground must be shown. *Ex parte Briggs*, 23 L. J. Q. B. 272.

Proof of Disbursements.] The oath of the churchwardens is generally held sufficient, with respect to all items in their accounts under 40s., unless they are suspected to be unfair; but the payment of larger sums must be verified by receipts and vouchers; and if required, witnesses should also be produced who were present at the making thereof, who shall subscribe their names to the vouchers, &c., in proof of the authenticity of the same. *Prid. Direct.* 93. Where the amount to be recovered by the overseers or their successors in the rate last made before the termination of their year of office is insufficient to meet the demands upon them, and such overseers pay the necessary excess out of their own funds, the overseer may pay his predecessor in respect of any money so paid by him in excess, and is to be allowed by the auditor, if the payment did not arise from the negligence or wilful action of the overseer so paying the sum out of his own funds. 39 & 40 Vict. c. 61, s. 29.

By immemorial custom churchwardens may be bound to pay visitation fees to the registrars of the archdeacon. *Shepherd v. Payne*, 33 L. J. C. P. 158. The liability of churchwardens to pay the fee of the registrar to an archdeacon is not personal, but is contingent upon their possessing funds out of which the fees may be legally paid. *Veley v. Pertwee*, L. R. 5 Q. B. 573 ; 39 L. J. Q. B. 196. Churchwardens are not liable for money received by their predecessors. *Lloyd v. Burnip*, L. R. 4 Ex. 63 ; 3 L. J. Ex. 25.

Returns to the Local Government Board.] Where any rates, taxes, tolls, or dues are levied, or expended, or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorised to act as a board, returns in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, are to be made by such persons to the Local Government Board. This annual return is to be made for the financial year ending the 25th of March, unless some other time is prescribed by the Local Government Board. The return is to be sent within one month after the audit of the receipts and expenditure to which the return relates is complete, or if the audit is not complete within six months after the end of the financial year for which the return is to be made, then on the expiration of such six months ; or if there is no audit, then within one month after the end of the said financial year. For the purpose of any such return, the date to which the accounts of any local authority are required by law to be made up and to be audited may be altered by the local authority, with the approval of the Local Government Board.

These provisions are extended to all local authorities, and the maximum penalty for not making a return is 20*l*. 23 & 24 Vict. c. 51 ; 40 & 41 Vict. c. 66.

Responsible for Church Goods.] The churchwardens may be cited by the ordinary to give further accounts of the church goods, although their accounts have been already allowed in vestry ; and if it appear that they have disposed of any of the said utensils or goods, with the approbation of the parishioners, but without the consent of the ordinary, in order to defray any part of the church rates or expenses, the ordinary may compel the churchwardens to replace the same out of their own pockets, or inflict such other punishment as he may deem expedient. *Godb.* 279 ; *Prid. Direct.* 94. See *Bishop's Case*, 2 Roll. R. 71.

Agreements.] Churchwardens in their corporate capacity may

enter into reasonable agreements, beneficial to the parish, which shall be binding on their successors and the parishioners. Thus in the case of *Martin v. Nutkin*, 2 P. Wms. 268, it was agreed between the plaintiffs and the parish, upon a vestry being duly convened for the purpose, that the ringing of a bell should cease during the lives of the plaintiffs and the survivor of them, they covenanting, in consideration thereof, to build a cupola to the church, and erect a clock and new bell. The plaintiffs performed their covenants in the deed executed between them and the parish; and the bell was silenced for about two years, when the defendant obtained a new order of vestry for ringing the five o'clock bell, but an injunction was granted by Lord Chancellor Macclesfield, to continue during the lives of the plaintiffs and the survivor of them; especially as it appeared that the majority and better part of the parish continued willing to abide by the agreement and protested against the new order.

Actions, &c., by.] We have already seen that churchwardens may bring actions for the recovery of, or damage done to, the goods of the church. 1 *Bac. Abr.* 372.

Proceedings against.] Churchwardens may be removed for misbehaviour, and others chosen before the year expires; *Lamb. Off. Ch.* sect. 3; or they may be sued for neglect of duty in the Ecclesiastical Court. *Welcome v. Lake*, 1 Sid. 281. So an indictment lies against them, if they take money, &c., *corruptè colore officii*, and do not account for it; *R. v. Eyres*, 1 Sid. 307; but they cannot be sued by their successors for a thing honestly done *ratione officii*. *Godh.* 279. If a churchwarden be committed for not accounting as overseer, it must be expressed in the commitment that he is committed in the latter character; for though the latter office is annexed to the former, the justices have not power over him as churchwarden. *R. v. Pecke*, 1 Keb. 574. If churchwardens and overseers are sued under the 59 Geo. 3, c. 12, s. 17, they must be described as churchwardens and overseers. *Ward v. Clarke*, 12 M. & W. 747; *Furnival v. Coombs*, 5 M. & Gr. 736. By 9 Geo. 3, c. 37, churchwardens, for paying the poor otherwise than in lawful money, are to forfeit to the poor not less than 10s. nor more than 20s.

Protection of.] As to protection of churchwardens in actions, see 7 Jac. 1, c. 5; and 21 Jac. 1, c. 12, s. 3.

SECTION VI.—PARISH CLERK.

. 7 & 8 Vict. c. 59, s. 2, enacts that whenever any vacancy occurs in the office of church clerk, chapel clerk, or parish clerk in any district, parish or place, the rector, incumbent, or other persons entitled to elect, may appoint a person in holy orders to fill the office; and such person when duly licensed is to be entitled to have all the profits, &c., belonging to the office and to be liable to perform all the ecclesiastical duties. But such clerk in holy orders so appointed is not to have a freehold in the office, but may be suspended or removed by the same authority and in like manner as a stipendiary curate; but subject to an appeal to the archbishop.

Such appointment or election, if made by others than the rector or incumbent of the parish, &c., is to be subject to his consent and approval; and no person in holy orders so appointed or elected is to be competent to perform any of the duties of the office, or other spiritual or ecclesiastical duties within such parish, &c., or to receive any profits, &c., of the office, unless and until he is licensed by the bishop, as is required in the case of a stipendiary curate. Such licence is to entitle him to hold the office and take the profits, &c., thereof, until he resigns or is removed or suspended, without any annual or other reappointment. Sect. 3.

The appointment of a clerk in orders is not to exempt the incumbent from the obligation of employing a curate where he is liable so to do. Sect. 4.

Qualification.] By *Canon 91*, it is required that the clerk shall be twenty years of age at least, known to the minister to be of honest conversation, and sufficient for his reading, writing, and also for his competent skill in singing (if it may be).

By whom chosen.] The nomination of clerks, it is said, was at one time vested in all incumbents by the common law and custom of the realm. *Gibs.* 214. But differences having arisen between ministers and their parishioners about the conferring of such offices, Archbishop Boniface decreed that the same rectors and vicars, whom it more particularly concerned to know who were fit, should make the choice.

By *Canon 91*, no parish clerk, upon any vacation, shall be chosen within the City of London or elsewhere, but by the parson or vicar; or, where there is no parson or vicar, by the minister of that place

for the time being; which choice shall be signified by the said minister, vicar or parson, to the parishioners the next Sunday following, in time of divine service.

A verbal appointment by the rector to the office of parish clerk is sufficient, and it seems no notice need be given to the parish. *R. v. Bobbing*, 1 N. & P. 166.

A licensed curate during the suspension of the incumbent may appoint the clerk. *Pinder v. Barr*, 4 E. & B. 105.

Election by Custom.] Since the making of the above canon, the right has often been contested between incumbents and parishioners. Where the nomination is in the rector with the consent of the vestry, parties intending to dissent should do so at the time of nomination. *R. v. Rector of St. Anne's*, 3 Burr. 1877. In *R. v. Davie*, 6 A. & E. 374, where a right of appointment was vested in certain governors, *und cum assensu* of the inhabitants, it was held, that a nomination by the governors, with a subsequent reference to the inhabitants for their assent, was sufficient.

How admitted.] Parish clerks, after having been duly appointed, are usually licensed by the ordinary, and sworn to obey the minister. *Johns*. 205. But this is not necessary to their title. *Peak v. Bourne*, 2 Str. 942. See, however, 7 & 8 Vict. c. 59, s. 3.

Remuneration.] Canon 91 directs that the clerk shall have and receive his accustomed wages, either at the hands of the churchwardens or by his own collection, according to the custom of the parish. As for the fee itself and its amount, it seems to depend entirely upon custom. Under the Church Building Acts (58 Geo. 3, c. 45, and 59 Geo. 3, c. 134), the clerk's stipend is payable out of the pew rents.

How dismissed.] A parish clerk may be deprived by those who placed him in his office; but if he is unjustly deprived, a *mandamus* will lie to the churchwardens to restore him. *Ile's Case*, 1 Ventr. 148.

Formerly there was considerable difficulty in removing a parish clerk from his office, which is a freehold, and he must have been summoned to answer the charges made against him. Now, however, by the 7 & 8 Vict. c. 59, s. 5, if it appears, upon complaint or otherwise, to any archdeacon or other ordinary, that any person, not in holy orders, holding or exercising the office of church clerk, chapel clerk, or parish clerk in any district, parish or place subject to his

jurisdiction, has been guilty of any wilful neglect or misbehaviour in his office, or that by reason of any misconduct he is an unfit and improper person to hold and exercise the same, such archdeacon, &c., may summon such clerk to appear before him, and by writing under his hand, or such process as is used in the Ecclesiastical Courts for procuring the attendance of witnesses, call before him all persons competent to give evidence respecting the matters imputed to such clerk, and may summarily hear and determine the truth of the matters charged against him; and if on such investigation it appears to the satisfaction of such archdeacon, &c., that they are true, he may forthwith suspend or remove such clerk from his office, and by certificate under his hand and seal, directed to the officiating minister, declare the office vacant; a copy of the certificate is to be affixed to the principal door of the church, and the persons entitled to elect are forthwith to elect another person in his place. But the exercise of the office by a sufficient deputy, who duly and faithfully performs the duties and in all respects well and properly demeaned himself, is not to be deemed a wilful neglect of office on the part of the clerk, so as to render him, for that cause alone, liable to be suspended or removed. The office of parish clerk cannot be assigned. *Nichols v. Davis*, L. R. 4 C. P. 80; 38 L. J. C. P. 127.

In new Churches.] The Acts for building new churches and making new ecclesiastical districts provide that the clerks to such churches and chapels shall be annually appointed by the minister thereof. 59 Geo. 3, c. 134, s. 29. The continuance of the clerk in office in successive years without an express reappointment amounts to a reappointment in each year. *Jackson v. Courtenay*, 27 L. J. Q. B. 37. The minister has no power to dismiss the clerk during the year of office without cause. *Ibid.* There is no provision of this kind with regard to churches and chapels built under the provisions of 1 & 2 Will. 4, c. 38, and 1 & 2 Vict. c. 107. By 59 Geo. 3, c. 134, s. 10, when any parish is divided, all fees and emoluments of the clerk and sexton afterwards arising in any division are to belong to the clerk and sexton of the division to which they are assigned. By the 19 & 20 Vict. c. 104, s. 9, the parish clerk and sexton of the church of any parish constituted under the New Parishes Acts is to be appointed by the incumbent for the time being of such church, and to be by him removable, with the consent of the bishop of the diocese, for any misconduct.

Incorporated in London.] By a charter of Henry the Third, the

parish clerks in and about London were incorporated, and authorized to make bye-laws and ordinances for their own regulation ; and, by the 10 Anne, for the building of fifty new churches within the bills of mortality, it is enacted, “ that the parish clerks of such new erected churches shall be members of the company or corporation of the clerks of the parish churches within the City and suburbs and liberties of London, Westminster and Southwark, and the fifteen out-parishes named in the letters-patent of the said corporation ; and shall make weekly and yearly accounts of the churchings and burials happening in their parishes, and shall, in all respects, be subject to the rules and orders of the said company.”

Duties and Liabilities.] The parish clerk is in some places employed, upon the occasion of administering the Lord’s Supper, to collect the alms from the communicants ; and the purloining any portion of the money so received is, doubtless, punishable as a crime ; though it seems that he cannot be indicted as servant to the minister or churchwardens, for embezzling such money as their property. *R. v. Burton*, 1 Moo. C. C. 237.

Gains a Settlement.] The office is a freehold one ; but although he receive more than 40s. a year from parochial burial fees, he is not entitled to vote for a county, either as holding a freehold office, or as having an interest in land, by virtue of his receipt of such fees. *Bushell v. Eastes*, 31 L. J. 44.

SECTION VII.—ORGANIST.

The organist of a parish church, although appointed and paid by the vestry, is guilty of an ecclesiastical offence if he plays on the organ immediately before or during, or immediately after divine service, contrary to the directions of the incumbent. *Wyndham v. Cole*, L. R. 1 P. D. 130.

SECTION VIII.—SEXTON.

How chosen.] The sexton (*segsten*, *segerstane*, *sacristan*, the keeper of the things belonging to divine worship) is usually chosen by the parish, though sometimes by the minister, where an usage to that effect prevails. The inhabitants have not *primâ facie* the

right to appoint the sexton. Where his duties consist in the care of the sacred vestments, and of the church, and in opening it for service, the presumption would be that the churchwardens have the power to appoint; but where his duties are confined to the churchyard, as digging graves, &c., the incumbent is presumed to have the right. If the offices of parish clerk and sexton are united, the clergyman, it seems, would have the right of appointing; but where they are separate, the presumption, in the absence of any custom, is that the appointment is in the incumbent and churchwardens jointly. *Causfield v. Blenkinsop*, 4 Exch. 234.

It has been decided that a woman may be chosen for and exercise the office of sextoness, and also that women can vote in the election of one. *Olive v. Ingram*, 2 Stra. 1114.

Salary.] The salary of the sexton depends upon custom, and is paid by the churchwardens. His fees are generally settled by order of the vestry, and a table of them is hung up in the vestry-room, or in the church. *Shaw's Par. L.* 71.

Duty of Sexton.] His business is generally to keep the church clean, swept and adorned; to open the pews; to make and fill up the graves for the dead; and to provide, under the direction of the churchwardens, candles and necessaries belonging to the church; to get the linen washed, &c.; to attend during divine service; to keep out excommunicated persons; and to prevent any disturbance in the church. *Shaw's Par. L.* 71.

The 32nd section of 15 & 16 Vict. c. 85, preserves to the sexton of a parish the right of performing in the burial-ground established under that Act, his duties as sexton in respect of the burial of parishioners and inhabitants of the parish; and the burial board are not entitled to refuse to allow him to perform those duties, on the ground that they choose to have them performed by their own servants. The sexton is therefore entitled to toll the bell in the chapel at such burial. *Rochester v. Thompson*, L. R. 6 C. P. 445. The sexton may delegate the performance of his duties to a deputy. *Ibid.*

A Freehold Office.] Sextons are considered by the common law to have freeholds in their offices; and, therefore, if they be improperly removed, a *mandamus* lies to restore them. *R. v. Kingscleere*, 2 Lev. 18; Salk. 428; *Ile's Case*, 1 Ventr. 153. But a return to such a *mandamus* that there is a custom for the inhabitants to remove the sexton at pleasure, is good. *R. v. Churchwardens of*

Taunton, 1 Cowp. 413; *R. v. Churchwardens of Thame*, 1 Stra. 115.

In New Parishes.] By the 59 Geo. 4, c. 134, s. 10, when any parish is divided under the provisions of the Church Building Acts, all fees, dues, profits and emoluments, belonging to the parish clerk or sexton respectively of any such parish, which shall thereafter arise in any district or division of any parish so divided, shall belong and be recoverable by the clerks and sextons respectively of each division to which they shall be assigned, in like manner and after the same rate as they were recoverable by the clerk and sexton respectively of the original parish; and the commissioners may make compensation for any loss of fees or emoluments which any clerk or sexton may sustain by reason of any such division. And by the 19 & 20 Vict. c. 104, s. 9, the sexton of any parish formed under the New Parishes Act is to be appointed by the incumbent, and removable by him with the consent of the bishop.

Gains a Settlement.] The office of sexton, like that of parish clerk, confers a right of settlement; and if the churchyard lie in two parishes, the sexton may gain a settlement in the one in which he resides, although no part of the church lies within that parish. *R. v. Liverpool*, 3 T. R. 118.

SECTION IX.—BEADLE.

Nature of Office.] Beadle (in the Saxon *bydel*, from *beodan*, to bid) signifies generally a crier or messenger of a Court.

How chosen.—Duty.] The beadle of a parish is chosen by the vestry, and his business is to attend the vestry, and give notice to the parisioners when and where it is to meet; to execute its orders, as messenger or servant; to assist the constable in taking up beggars, passing vagrants, &c.; for which latter purpose he is sometimes inserted among the overseers of the poor, &c. *Shaw's Par. L.* c. 19; 1 *Burn's Ecc. L.* 415 *r.* His appointment is during pleasure; and he may be dismissed for misconduct, at any time, by the parishioners in vestry assembled.

In some of the wards in the City of London it is customary to swear in the beadle as constable also; and it seems, that whether he has this additional office cast upon him or not, he may, in common with watchmen, by the common law, arrest and detain in prison,

for examination, persons walking the streets at night whom there is reasonable ground to suspect of felony, without any proof of a felony having been actually committed. *Lawrence v. Hedger*, 4 Taunt. 14. But unless he is regularly sworn as a peace officer, he is not entitled, generally, to act as such, and he cannot, in that character, receive into his custody a person charged with a breach of the peace or other offence. *Cliffe v. Littlemore*, 5 Esp. 39.

CHAPTER IV.

SACRAMENTS AND RITES OF THE CHURCH.

- SECTION I. *Baptism.*
 II. *The Lord's Supper.*
 III. *Marriage.*
-

SECTION I.—BAPTISM.

Where Administered.] Children ought, if possible, to be baptized in the church of the parish in which they are born. But upon great cause and necessity they may be baptized at home, and children so baptized are declared to be well and sufficiently baptized, and ought not to be baptized again. *Rubric to Baptismal Service.* If the acting minister, being duly informed, without collusion, of the weakness and danger of death of any infant unbaptized in the parish, and being thereupon desired to go to its residence to baptize it, shall either refuse, or by gross negligence so defer the time that it dieth unbaptized through his default, he shall be suspended for three months; and before his restitution shall acknowledge his fault, and promise, before his ordinary, that he will not wittingly incur the like again. *Canon 69.* Baptism by Dissenting ministers or laymen is valid, provided that water be sprinkled on the person baptized in the name of the Father, the Son, and the Holy Ghost.

Sponsors.] It is required by the Rubric, that there shall be, for every male child to be baptized, two godfathers and one godmother; and for every female, one godfather and two godmothers. But parents cannot assume this office for their own children. *Canon 29;* but, as a matter of fact, parents do assume this office now-a-days. The sponsor ought to be of the same station as the person for whom he becomes surety. *Broome. Johns. Dict. "Sponsor."*

Naming the Child.] By a constitution of Archbishop Peccham,

the ministers shall take care not to permit wanton names, which, being pronounced, do sound to lasciviousness, to be given to children baptized, especially of the female sex. And if otherwise it be done, the same shall be changed at confirmation. *Lind.* 245 ; 1 *Inst.* 3. But now, as the bishop does not pronounce the name of the person to be confirmed, it is said he cannot alter it. 1 *Burn's Ecc. L.* 110. It seems, therefore, doubtful, whether a parent can insist upon the minister baptizing the child, in a name which offends against the above constitution of the archbishop.

Fres.] It is unlawful for the minister, clerk in orders, parish clerk, vestry clerk, warden, or any other person, to demand any fee or reward for the celebration of the sacrament of baptism, or for the registry thereof. 35 & 36 Vict. c. 36.

SECTION II.—THE LORD'S SUPPER.

The minister to give notice on the Sunday, or on some holyday immediately preceding ; and those who intend to be partakers shall signify their intention some time the day before the communion. But if there be not a convenient number to communicate, there shall be no celebration ; and there must be four, or three communicants at the least, even where the parish contains no more than twenty persons qualified to receive the communion. 2 *Burn's Ecc. L.* 425 ; *Rubric to Communion Service.*

Administration of.] In all churches, convenient and decent communion tables being provided, they must be kept in a seemly condition, covered, in time of divine service, with a carpet of silk, or other decent stuff ; and at the time of ministration, they should be covered with a fair linen cloth ; at which time the table shall be placed in so good sort within the church or chancel as thereby the minister may be more conveniently heard, and the greater number of communicants may be accommodated. *Canon* 82. And it is forbidden to administer the Holy Communion in private houses, except in times of necessity to the dangerous sick and impotent. *Canon* 71.

It is unlawful to burn candles on the communion table, or super-altar, during the celebration of the Holy Communion when such candles are not wanted for the purpose of giving light. *Martin v. Mackonochie, supra.* The ceremonial use of incense immediately before the celebration of the Holy Communion so as to be pre-

paratory or subsidiary to such celebration is unlawful. *Sumner v. Wix*, L. R. 3 A. & E. 58 ; 39 L. J. Ecc. 25.

The churchwardens are to provide a sufficient quantity of fine white bread and of good wholesome wine, with the advice of the minister. *Canon 20*. And if any remain unconsecrated, the curate shall have it to his own use ; but the surplus of that which was consecrated shall be eaten and drunk, after the blessing, in the church, by the priests and such communicants as he shall then call unto him. *Rubric to Communion Service*. In the case of *Franklyn v. Master and Brethren of St. Cross*, Bunb. 79, the vicar, by the endowment, was to find the sacrament wine, yet the Court were of opinion that it should be found by the parish, according to the canon, or Rubric which is established by Act of Parliament.

It is unlawful to use bread unleavened, or made with honey, instead of bread such as is usually eaten. *Ridsdale v. Clifton*, *supra*.

Administering wine mixed with water, instead of wine only, to the communicants is unlawful, whether the water be mingled with the wine before or during the communion service. *Hebbert v. Purchas*, L. R. 3 P. C. 409 ; 40 L. J. P. C. 55.

By *Canon 27*, no minister, when he celebrateth the communion, shall wittingly administer the same to any but to such as kneel. But it is declared that no adoration of the elements is intended or ought to be done, for that were idolatry. And, by the statute 1 Edw. 6, c. 1, s. 8, it is enacted, that the blessed sacrament be administered unto the people, with the priest, under both the kinds, that is to say, of bread and wine, and not bread only, except necessity require otherwise ; as more conformable to the usage of the Apostles and the primitive Church, than that the priest should receive it alone.

The minister during the prayer of consecration must so stand that he may in good faith enable the communicants present, or the bulk of them, being properly placed, to see, if they wish it, the breaking of the bread, and the performance of other manual acts mentioned in the Rubric. *Ridsdale v. Clifton*, L. R. 2 P. D. 276 ; 45 L. J. P. C. 12.

The celebrant during the prayer of consecration must stand and not kneel or prostrate himself before the consecrated elements during the reciting of the prayer. *Martin v. Muckonochie*, L. R., 2 P. C. 365 ; 3 P. C. 409 ; 39 L. J. P. C. 11.

Any unnecessary elevation of the elements is unlawful. *Ibid.*

A minister of the Church may affirm or promulgate the doctrine that there is an actual or real presence external to the act of the communicant in the elements consecrated in administration of the sacrament of the Lord's Supper; but he must not teach that there is a visible presence of our Lord upon the altar at the celebration, nor that adoration is due to the consecrated elements. *Sheppard v. Bennett*, L. R. 3 A. & E. 167; 39 L. J. P. C. 59.

Refusal to Administer.] See Rubric, and *Canon 27*; and *Jenkins v. Cook*, L. R. 1 P. D. 80; 45 L. J. P. C. 1.

Offertory.] The ecclesiastical law enjoins the collection of alms for the poor by the deacons, churchwardens, or other fit persons during the reading of the offertory; and they are to bring them to the priest to be disposed of after divine service. The sums thus obtained are to be employed in such pious and charitable uses as the minister and churchwardens shall think fit, or, in case of their disagreement, by the ordinary *Rubric to Communion Service*; 2 *Burn's Ecc. L.* 427. Alms collected in chapels, as well as in parish churches, during the reading of the offertory, are at the disposal of the incumbent of the parish and the churchwardens thereof, and not of the minister or proprietors of the chapel. *Moysey v. Hillcoat*, 2 Hagg. Rep. N. S. 56.

Penalty for Reviling.] The 1 Edw. 6, c. 1, s. 1, enacts that whoever shall deprave, despise, or condemn the Lord's Supper, in contempt thereof, by any contemptuous words, or by any words of depraving, despising, or reviling, shall suffer imprisonment of his body, and make fine and ransom at the King's will.

SECTION III.—MARRIAGE.

Nature of the Contract.] Marriage, as understood in Christendom, is the voluntary union for life of one man and one woman, to the exclusion of all others. *Hyde v. Hyde*, L. R. 1 P. & M. 130.

Mode of Solemnizing.] By 6 & 7 Will. 4, c. 85, every person may contract marriage according to the forms of the persuasion to which he belongs, or without reference to any religious ceremony whatever, should he wish to treat it as a merely civil contract. See *post*, p. 139.

Marriage Acts.] The Legislature has from time to time enacted

statutes for the regulation of marriages. The first consolidation Act was that of Lord Hardwicke, 26 Geo. 2, c. 33, but the 4 Geo. 4, c. 76, is the statute now in force relating to the solemnization of marriages in England, except so far as it is altered by the 6 & 7 Will. 4, c. 85.

Publication of Banns.] The word "bann" is probably of Saxon origin, and in its primary sense signifies a proclamation. See *Fel- lowes v. Scott*, 2 Phill. 240.

By 4 Geo. 4, c. 76, s. 2, all banns of matrimony shall be published in an audible manner in the parish church, or in some public chapel in which banns of matrimony may be lawfully published (see 6 Geo. 4, c. 92; 11 Geo. 4 & 1 Will. 4, c. 18, *post*, p. 134), of or belonging to such parish or chapelry wherein the persons to be married shall dwell, according to the form of words prescribed by the Rubric prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there shall be no morning service in such church or chapel upon the Sunday upon which such banns shall be so published), immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church, or in any such chapel as aforesaid, belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said Rubric concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.

When the parties live within different ecclesiastical districts, the banns are to be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel-licensed, under the provisions of the 6 & 7 Will. 4, c. 85, s. 26, for the other district within which one of the parties is resident, and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published if that Act had not been passed. 1 Vict. c. 22, s. 34.

After the solemnization of a marriage under a publication of

banns, it is not necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries in which the banns were published. 4 Geo. 4, c. 76, s. 26.

By 6 Geo. 4, c. 92, s. 2, marriages may be legally solemnized in all churches and chapels erected since the passing of 26 Geo. 2, c. 33, and duly consecrated, in which it has been usual since the passing of that Act to solemnize marriages. And by 11 Geo. 4, c. 18, s. 4, banns published in chapels duly consecrated before the passing of that Act (29 May, 1830), shall not be questioned by reason that they had been published in a chapel not legally authorised for the publication of banns, or the solemnization of marriages.

In Chapels, District Churches, &c.] By 4 Geo. 4, c. 76, s. 3, the bishop of the diocese, with the consent of the patron and incumbent of the parish, may authorise the publication of banns and the solemnization of marriages in any public chapel having a chapelry thereunto annexed, or in any chapel situate in an extra-parochial place. By 6 & 7 Will. 4, c. 85, s. 26, bishops, with the like consent, may license chapels for marriages in populous parishes, whether such chapels have or have not chapelries annexed. By section 30, all regulations respecting marriages in parish churches are to extend to such chapels. And by 1 Vict. c. 22, s. 33, banns may be published in any chapels licensed by the bishop under the last-mentioned Act, provided that notice be affixed in conspicuous parts of the interior of such chapels, that "banns may be published and marriages solemnized at this chapel."

By 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, all Acts relating to publication of banns and marriages are to apply to all separate and distinct parish churches, and all churches and chapels of ecclesiastical districts or consolidated chapelries built under the authority of those Acts. And by 11 Geo. 4 & 1 Will. 4, c. 18, s. 3, all marriages solemnized in such churches, &c., are as valid as if solemnized in parish churches. See also 1 & 2 Vict. c. 106, s. 16, as to a church or chapel which is made the parish church, &c.

The commissioners, with the consent of the bishop, or the bishop alone, may determine whether banns of marriage shall be published and marriages celebrated in churches and chapels to which districts are assigned under the 1 & 2 Will. 4, c. 38; and if it is so determined, a certificate to that effect is to issue. 7 & 8 Vict. c. 56, s. 1. See 59 Geo. 3, c. 134, s. 16.

By the 19 & 20 Vict. c. 104, s. 11 (*ante*, p. 12), the power of authorising the publication of banns in churches or chapels to which a district belongs is given to the Ecclesiastical Commissioners, on the application of the incumbent, with the consent of the bishop of the diocese.

In Places having no Church or Chapel.] All parishes where there is no parish church or chapel, or none wherein divine service is usually solemnized every Sunday, and all extra-parochial places having no public chapel wherein banns may be lawfully published, are to be deemed to belong to the parish or chapelry next adjoining; and where banns are published in any such adjoining parish or chapelry, they are to be certified in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry. 4 Geo. 4, c. 76, s. 12.

Marriages may be authorised by the bishop in chapels in extra-parochial places, and such marriages are to be valid. 23 Vict. c. 24.

If the church of any parish, or chapel of any chapelry, in which marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused, the banns may be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place, within the limits of the parish or chapelry, which shall be licensed by the bishop of the diocese for the performance of divine service, during the repair or rebuilding of the church [or in any consecrated chapel of such parish or place, as the bishop may direct; 11 Geo. 4 & 1 Will. 4, c. 18]; and all marriages heretofore solemnized [or hereafter; 5 Geo. 4, c. 32, s. 1], in other places within the said parishes or chapelries than the said churches or chapels, on account of their being under repair or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account; nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever. 4 Geo. 4, c. 76, s. 13.

All banns of marriage proclaimed and marriages solemnized in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly. 5 Geo. 4, c. 32, s. 3.

All marriages, rites, and ceremonies celebrated or performed in a

consecrated church or chapel which may have been rebuilt, repaired, or enlarged prior to such celebration, and wherein such marriages, rites, and ceremonies might have been legally solemnized or performed previously to such alteration of the structure, are to be valid and effectual for all purposes, notwithstanding that upon such repair or enlargement the external walls have not remained entire, or the position of the communion table has been altered, and notwithstanding that since such rebuilding, repair, or enlargement no reconsecration of the church or chapel has taken place. 30 & 31 Vict. c. 133 s. 12.

Notice to publish Banns.] No parson, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister, or curate a notice in writing, dated on the day on which the same shall be so delivered, of their true Christian names and surnames, and of the house or houses of their respective abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively. 4 Geo. 4, c. 76, s. 7.

Republication of Banns.] Whenever a marriage shall not be had within three months after the complete publication of banns, no minister shall proceed to the solemnization of the same until the banns shall have been republished on three several Sundays, in the form and manner prescribed in this Act, unless by licence duly obtained according to the provisions of this Act. Sect. 9.

Register of Banns.] The churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized are to provide a proper book of substantial paper, marked and ruled in manner directed for the register-book of marriages; and the banns are to be published from the said register-book of banns by the officiating minister, and not from loose papers; and after publication are to be signed by the officiating minister, or by some person under his direction. Sect. 6.

By the 4 Geo. 4, c. 76, s. 22, if any persons knowingly and wilfully intermarry in any other place than a church or chapel (unless by special licence), or without due publication of banns or licence, the marriage is to be null and void.

A marriage is valid, although celebrated without banns or licence

first had and obtained, unless both the parties were aware at the time of the ceremony of the absence of banns and licence. *Greaves v. Greaves*, L. R. 2 P. & M. 423; 41 L. J. P. & M. 66.

A marriage solemnized after an undue publication of banns will not be held null and void under this section unless it be shown that both parties "knowingly and wilfully" concurred in such undue publication. *Gompertz v. Kensit*, L. R. 13 Eq. 369.

By 6 & 7 Will. 4, c. 85, s. 42, marriages solemnized in any other place than that specified in the notice and certificate, or without due notice to the superintendent registrar, or without certificate of notice, or licence, if necessary, or in the absence of a registrar or superintendent registrar, if his presence be necessary, are null and void. But the Act does not extend to marriages legally solemnized under 4 Geo. 4, c. 76.

Registrar's Certificate.] By 6 & 7 Will. 4, c. 85, s. 1, and 1 Vict. c. 22, s. 36, any marriage, which by any law or canon might be solemnized after publication of banns, may be solemnized on production of a registrar's certificate; and notice to such registrar and the issue of such certificate are to stand instead of the publication of banns, where no such publication has taken place, to all intents and purposes; and every parson, vicar, minister or curate is to solemnize marriage after such notice and certificate in like manner as after due publication of banns, provided the church in which the marriage is solemnized be within the district of the superintendent registrar by whom the certificate has been issued.

Licence.] A licence is a dispensation by virtue of which marriage is permitted to be solemnized without the publication of banns, and is to be granted only by a person having episcopal authority. *Gibs.* 511. If it be granted to a man in the name by which he is usually known the marriage will be valid, although that be not his real name. *R. v. Burton upon-Trent*, 3 M. & Sel. 537; *Clowes v. Clowes*, 3 Curt. 185. But if a licence were obtained in the name of one person with the intention that it should be used by another, it would be invalid. *Lane v. Goodwin*, 4 Q. B. 361. See *Cope v. Burt*, 1 Hagg. Con. 438.

By 4 Geo. 4, c. 76, s. 10, no licence of marriage shall be granted by any archbishop, bishop, or person having authority to grant such licences, to solemnize any marriage in any other church or chapel than in the parish church, or in some public chapel of, or belonging to, the parish or chapelry, within which the usual place

of abode of one of the persons to be married shall have been, for the space of fifteen days immediately before the granting of such licence; but after marriage such residence need not be proved, nor is evidence admissible to prove the contrary. Sect. 26.

Where a licence is granted in due form for marriage at a particular church, the incumbent is under no obligation to inquire whether there has been a sufficient residence to justify the granting of the licence. His proper course is to assume the regularity of licence, and to perform marriage ceremony. *Tuckniss v. Alexander*, 32 L. J. Ch. 794.

How Licence granted.] For avoiding all fraud and collusion in obtaining licences, one of the parties shall personally swear before the surrogate or other person having authority to grant the licence that he or she believeth that there is no impediment of kindred or alliance, or of any other lawful cause, nor any suit commenced in any Ecclesiastical Court, to bar or hinder the proceeding of the said matrimony, according to the tenor of the said licence; and that one of the said parties hath, for the space of fifteen days immediately preceding such licence, had his or her usual place of abode within the parish or chapelry within which such marriage is to be solemnized; and where either of the parties not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons, whose consent to such marriage is required under the provisions of this Act, has been obtained thereto: Provided always, that if there shall be no such person or persons having authority to give such consent, then, upon oath to that effect by the party requiring such licence, it may be granted without such consent. Sect. 14.

Whenever a marriage shall not be had within three months after the grant of a licence, no minister shall proceed to the solemnization of such marriage until a new licence shall have been obtained, unless by banns duly published, according to the provisions of this Act. Sect. 19.

All licences granted for the solemnization of marriages in the church of any parish, or chapel of any chapelry, shall be taken to authorise marriages in any place, within the limits of such parish or chapelry, which shall be licensed by the bishop for the performance of divine service, during the repair or rebuilding of any such church or chapel; or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry

wherein marriages have been usually solemnized. 5 Geo. 4, c. 32, s. 2.

Caveat against Licence.] If a caveat be entered against the grant of a licence, being duly signed by, or on the behalf of, the person who enters the same, together with his place of residence, and the ground of objection on which his caveat is founded, no licence is to issue till the caveat, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the registrar that he has examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence, or until the caveat be withdrawn by the party who entered the same. 4 Geo. 4, c. 76, s. 11.

Special Licence.] The power to grant special licences was given to the Archbishop of Canterbury by 25 Hen. 8, c. 21, s. 3; they are generally confined to persons of a certain station. Under a special licence a marriage may be solemnized at any time or place. The 4 Geo. 4, c. 76 does not deprive the Archbishop of Canterbury, and his officers, of this right. Sect. 20. The 6 & 7 Will. 4, c. 85, s. 1, contains the same reservation.

The affidavit and fiat upon which a special licence issued, and a copy of the register stating the marriage to have been by special licence, were held sufficient evidence of such a marriage without producing or accounting for the licence. *Doe d. Earl of Eyremont v. Grazebrook*, 4 Q. B. 406.

Marriage of Minors.—Consent.] Marriages of minors made without parental consent were invalid, both by the canon and civil law. *Ayliffe, Parerg.* 362.

By 4 Geo. 4, c. 76, s. 16, the father, if living, of any party under twenty-one years of age, such party not being a widower or widow; or, if the father shall be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them; and in case there shall be no such guardian or guardians, then the mother of such party, if unmarried; and if there shall be no mother unmarried, then the guardian or guardians of the person appointed by the Court of Chancery, if any, or one of them, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorised to give such consent. This section is directory only in requiring consent, and does not make

the marriage void if solemnized without it. *R. v. Birmingham*, 8 B. & C. 29. See *Chitt. Stat.*, "*Marriage*," 225 d.

Where Parent, &c., Insane.] In case the father of the parties to be married, or one of them, so under age as aforesaid, or the guardian, mother, or any whose consent is made necessary as aforesaid to the marriage of such parties, are *non compos mentis*, or in parts beyond the seas, or unreasonably or from undue motives refuse or withhold his, her or their consent to a proper marriage, any person desirous of marrying, in any of the before-mentioned cases, may apply by petition to the Lord Chancellor, Master of the Rolls or Vice-Chancellor, who may proceed upon such petition in a summary way; and in case the marriage proposed, upon examination, appears to be proper, the said Lord Chancellor, &c., is judicially to declare the same to be so; and such judicial declaration shall be as good as if the father, &c., had consented to such marriage. 4 Geo. 4, c. 76, s. 17.

This clause does not apply where the father is of sound mind, and unreasonably withholds his consent. *Ex parte I. C.*, 3 Myl. & Cr. 471.

Banns of Minors.] By 4 Geo. 4, c. 76, s. 8, no minister, vicar or curate solemnizing marriages between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, minister, vicar or curate shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare, or cause to be declared, in the church or chapel where the banns shall be so published, at the time of such publication, his, her or their dissent to such marriage, such publication of banns shall be absolutely void. But though dissent thus expressed will make banns void, yet consent in marriages, by banns, is not necessary. 3 *Phill.* 581.

Falsely procuring Marriage of Minors.] See 4 Geo. 4, c. 76, ss. 23, 24, 25.

Marriage under 6 & 7 Will. 4, c. 85.] It has been before observed that a new mode of solemnizing marriage has been introduced by 6 & 7 Will. 4, c. 85, the principal provisions of which and the 1 Vict. c. 22 and 19 & 20 Vict. c. 119, are as follows:—

Notice to be given to the Superintendent Registrar.] By sect. 3 of the 6 & 7 Will. 4, c. 85, the superintendent registrar of births

and deaths of every union, parish or place, is in right of his office superintendent registrar of marriages. Wherever a marriage is intended to be solemnized under these Acts, one of the parties is to give a notice to the superintendent registrar of the district in which they have dwelt for not less than seven days next preceding. If the parties have dwelt in the districts of different superintendent registrars, notice must be given to each [unless the marriage is to be by licence, in which case a notice to the superintendent registrar of the district where one of the parties resides is sufficient. 19 & 20 Vict. c. 119, s. 6.] Sect. 4.

The superintendent registrar is to file all such notices, and enter them in a book, called the "Marriage notice book," which is to be open to inspection by all persons at reasonable times; he is entitled to 1s. fee for each entry. Sect. 5.

Declaration to accompany Notice.] By 19 & 20 Vict. c. 119, s. 2, the party intending marriage is, at the time of giving this notice, to make and sign or subscribe a solemn declaration in writing, in the body or at the foot of the notice, that he or she believes that there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that the parties to the said marriage (in case the marriage is intended to be had without licence) have, for the space of seven days immediately preceding the giving of such notice, had their usual place of abode and residence within the district of the superintendent registrar or respective superintendent registrars to whom such notice or notices, as the case may be, are given, or (in case such marriage is intended to be had by licence) that one of the said parties hath for the space of fifteen days immediately preceding the giving of such notice had his or her usual place of abode and residence within the district of the superintendent registrar to whom such notice is given; and when either of the parties intending marriage, and not being a widower or widow, is under the age of twenty-one years, the party making such declaration is further to declare that the consent of the person or persons whose consent to such marriage is by law required has been given, or (as the case may be) that there is no person whose consent to such marriage is by law required; and every declaration is to be signed and subscribed by the party making the same, in the presence of the superintendent registrar to whom the notice of marriage containing it is given, or in the presence of his deputy, or of some registrar of births and deaths or of marriages for the district in

which the party giving such notice resides, or of the deputy of such registrar, who is to attest the same by adding thereto his name, description and place of abode; and no certificate or licence for marriage is to be issued pursuant to any such notice unless the notice be accompanied by such solemn declaration duly made and signed or subscribed and attested as aforesaid; and every person who knowingly or wilfully makes and signs or subscribes any false declaration, or who signs any false notice for the purpose of procuring any marriage under the provisions of any of the former Acts or this Act, is to suffer the penalties of perjury.

Notice to be affixed in Office.] If the marriage is to be without licence, the superintendent registrar to whom notice of such intended marriage has been given is to cause the notice, or a true and exact copy thereof, as entered in the marriage notice book, under his hand, to be suspended or affixed in some conspicuous place in his office during twenty-one successive days next after the day of the entry of the notice in his marriage notice book, before any marriage shall be solemnized in pursuance of such notice. 19 & 20 Vict. c. 119, s. 4. If the marriage is to be by licence, the notice need not be suspended in the office, but the party giving it must state therein that the marriage is to be celebrated by licence. *Ibid.* Sect. 5.

Form of Notice.] Every notice of marriage given after the 1st of January, 1857, is to be in the form given in the schedule (A.) to that Act, or to the like effect; and in every case where the marriage is intended to be had and solemnized under the provisions of the 3 & 4 Vict. c. 72 (*post*, p. 142), such notice is, in addition to the several particulars comprised in the said schedule, to contain the declaration required to be made by one of the parties to such intended marriage, pursuant to the second section of that Act; and the superintendent registrar to whom any such notice of marriage is so given is forthwith to enter the particulars, and the date thereof, and the name of the party giving the same, into the marriage notice book; and for every such entry he is entitled to a fee of one shilling. 19 & 20 Vict. c. 119, s. 3.

The "due notice" required by these Registration Acts for the validity of a marriage before a registrar has been held to be a notice conforming to the formalities provided by the 6 & 7 Will. 4, c. 85, and the words "due notice" to be satisfied, though the contents of the notice in respect of Christian names and residences of

Registrar-General declares the grounds of such caveat frivolous, the party entering the same is to be liable for the costs of the proceedings and damages in a special action on the case by the party against whose marriage the caveat was entered; and by 1 Vict. c. 22, s. 5, a copy of the declaration of the Registrar-General, sealed with the seal of his office, is evidence that the caveat was frivolous.

Time of solemnizing the Marriage.] Marriages by licence may be solemnized after the expiration of one whole day after the entry of the notice. See 19 & 20 Vict. c. 119, s. 9. In either case they may be solemnized at any time within three calendar months after the entry of such notice. *Ibid.* Sects. 4 and 9.

If the marriage is not had within three calendar months after the notice, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings, are to be utterly void. 7 & 8 Will. 4, c. 85, s. 15.

Delivery of Certificate.] The certificate, or (in case the parties have given notice to different superintendents) the certificates of each, are to be delivered to the officiating minister, if the marriage is to be according to the rites of the Church of England; the certificate or licence is to be delivered to the registering officer of the Quakers for the place where the marriage is solemnized, if it is to be according to the usages of that people; or to the officer of the synagogue by whom the marriage is solemnized, if according to the usages of the Jews; and in all other cases, to the registrar present at the marriage. 7 & 8 Will. 4, c. 85, s. 16.

Solemnizing Marriage in Registered Building.] At the expiration of the period limited, the marriage may be solemnized in the registered building stated in the notice, according to such form and ceremony as the parties please, provided that it is solemnized with open doors, between the hours of eight and twelve in the forenoon, and in the presence of a registrar of the district and of two or more credible witnesses; and provided that, during the ceremony each of the parties declares, in the presence of the registrar and witnesses, "I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D." And each of the parties is to say to the other: "I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)." 7 & 8 Will. 4, c. 85, s. 20.

But no marriage is to be solemnized in any such registered building without the consent of the minister or of one of the trustees, owners, deacons or managers thereof, nor in any registered building of the Church of Rome without the consent of the officiating minister thereof, nor in any church or chapel of the United Church of England and Ireland without the consent of the minister thereof, nor in such latter case by any other than a duly qualified clergyman of the said United Church, or with any other forms or ceremonies than those of the said United Church, any statute or statutes to the contrary notwithstanding. 19 & 20 Vict. c. 119, s. 11.

Registering Buildings.] Any proprietor or trustee of a separate building certified according to law as a place of religious worship, may apply to the superintendent registrar of the district in order that such building may be used for solemnizing marriages therein, and in such case he is to deliver to the superintendent registrar a certificate signed in duplicate by twenty householders at least, that such building has been used by them during one year at least as their usual place of public religious worship, and that they are desirous it should be registered. Each of these certificates must be countersigned by the proprietor or trustee by whom it is delivered; the building will then be registered by the Registrar-General, who will return one of the certificates to the superintendent registrar, to be by him entered in a book; he is also to give a certificate of the registry to the proprietor or trustee, and to publish it in a county newspaper and the *Gazette*, for which he is entitled to a fee of 3*l*. If it be made to appear to the Registrar-General that such building has been disused for public worship, he may cancel the registry, and substitute some other public building, although it has not been used for public worship for one year, and after such disuse and substitution such old building cannot be used for marriages unless again registered. The superintendent registrar is to go through the same proceedings with respect to such cancel and substitution, and is entitled to the same fee. 7 & 8 Will. 4, c. 85, ss. 18, 19, 20.

Marrying at Registrar's Office.] Persons may, after the proper formalities, marry at the registrar's office, and in the presence of the superintendent registrar, some registrar of the district, and two witnesses, making the declaration and using the words above mentioned. In both cases the marriage must take place between eight

and twelve in the forenoon, the doors of the building or office being open. *Ibid.* Sect. 21.

If the parties to any marriage contracted at the registry office of a district desire to add the religious ceremony ordained or used by the church or persuasion of which they are members, to the marriage so contracted, they may present themselves for that purpose to a clergyman or minister of the church or persuasion of which they are members, having given notice to him of their intention so to do; and such clergyman, &c., upon the production of their certificate of marriage before the superintendent registrar, and upon the payment of the customary fees (if any), may, if he sees fit, in the church or chapel whereof he is the regular minister, by himself or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister belongs. But no minister of religion who is not in holy orders of the Church of England shall under the provisions of this Act officiate in any church or chapel of the United Church of England and Ireland; and nothing in the reading or celebration of such service is to supersede or invalidate any marriage so previously contracted, nor is such reading or celebration to be entered as a marriage among the marriages in the parish register: provided also, that at no marriage solemnized at the registry office of any district shall any religious service be used at such registry office. 19 & 20 Vict. c. 119, s. 12.

Fees for Marriages.] The registrar is entitled to a fee of 10s. for every marriage by licence in his presence, and of 5s. for every marriage without licence. 7 & 8 Will. 4, c. 85, s. 22.

Appointment of Registrars.] The Registrar-General may appoint persons, with such qualifications as he thinks fit, to be registrars of marriages within the district of a superintendent registrar, and every appointment hereafter made by any superintendent registrar of registrars, for the purpose of being present at marriages to be solemnized under these Acts, is to be by writing under the hand of such superintendent registrar, and subject to the approval of the Registrar-General. 19 & 20 Vict. c. 119, s. 15.

Registrar may appoint Deputy.] Every registrar of marriages is empowered, subject to the approval of the Registrar-General, to appoint, by writing under his hand, a fit person to act as his deputy, in case of his illness or unavoidable absence; and every such deputy, while so acting, is to have all the powers and duties

and to be subject to all the provisions and penalties given, imposed and contained concerning registrars of marriages; and is to hold office during the pleasure of the registrar by whom he was appointed, but to be removable by the Registrar-General; and every registrar of marriages is to be civilly responsible for the acts and omissions of his deputy; and in case any registrar of marriages dies, or otherwise ceases to hold office, his deputy shall become the registrar of marriages in his place until the appointment of another registrar of marriages shall have been made and notified to him by the superintendent registrar or by the Registrar-General, and shall, while continuing such registrar, have the same powers and duties and be subject to the same provisions and penalties as any other registrar of marriages. *Ibid.* Sect. 16.

Validity of Marriage.] Any natural born subject of the Queen, or any person whose right to be deemed a natural born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Probate and Divorce Division for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather or grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such Court for a decree declaring that his marriage was or is a valid marriage, and such Court is to have jurisdiction to hear and determine the application, and make such decree declaratory of the validity or invalidity of such marriage, and such decree is to be binding on all persons. 21 & 22 Vict. c. 93.

Void Marriages.] The forms of entering into the contract of marriage are regulated by the *lex loci contractus*; the essentials of the contract depend upon the *lex domicilii*. If the contract is in essentials contrary to the law of the domicile, the marriage (although duly solemnized elsewhere) is void in the country of domicile. *Brook v. Brook*, 9 H. L. C. 193.

Marriages are made void for the following causes only, by the 4 Geo. 4, c. 76:—

1. If they are between persons knowingly and wilfully intermarrying in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special licence.

2. Or knowingly and wilfully intermarrying without due publication of banns, or a licence from a person or persons having authority to grant the same. See *Dormer v. Williams*, 1 Curt. 870.

3. Or knowingly and wilfully consenting to, or acquiescing in, the solemnization of such marriage by any person not being in holy orders.

This is now, of course, subject to the limitations introduced by 6 & 7 Will. 4, c. 85; sect. 42 of which provides, that after the 1st of March, 1837, marriages of persons knowingly and wilfully intermarrying under the provisions of that Act in any other place than the church, registered building, office or other place specified in the notice and certificate, or without due notice to the superintendent registrar, or without certificate duly issued, or without licence, if a licence be necessary under the Act, or in the absence of a registrar or superintendent registrar, where his presence is necessary under the Act, are to be null and void.

But by the 19 & 20 Vict. c. 119, s. 17, after any marriage has been solemnized under the authority of any of these Acts, it shall not be necessary, in support of such marriage, to give any proof of the actual dwelling or of the period of dwelling of either of the parties previous to the marriage within the district stated in any notice of marriage to be that of his or her residence, or of the consent to any marriage having been given by any person whose consent thereto is required by law, or that the registered building in which any marriage may have been solemnized had been certified according to law as a place of religious worship, or that such building was the usual place of worship of either of the parties, nor shall any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage; and all marriages solemnized, under the authority of any of these Acts, in any building or place of worship which has been registered pursuant to the 6 & 7 Will. 4, c. 85, but which may not have been certified as required by law, shall be as valid in all respects as if such place of worship had been so certified.

It is not necessary here to examine all the grounds on which the Ecclesiastical Courts have declared marriages void; it is enough to observe that no marriage is voidable by the ecclesiastical law after the death of either of the parties. *Co. Litt.* 33a; 1 *Hagg.* 414. Marriages between persons within the prohibited degrees of affinity

and consanguinity were voidable. They are now made void by the 5 & 6 Will. 4, c. 54, which see *post*, p. 151. Marriages procured by force and restraint, or fraud, may also be avoided. *Harper v. Morris*, 2 Hagg. 436. So, where a marriage is procured by conspiracy, if a state of disability creating want of reason and volition, and amounting to an incapacity to consent, is thereby produced. *Sullivan v. Sullivan*, 2 Hagg. 240. See *Harrod v. Harrod*, 1 Kay & Johns. 4. In *R. v. Birmingham*, 8 B. & C. 29, a marriage brought about by fraud of parish officers was held valid.

Refusal to marry.] An action cannot be maintained against a clergyman for refusing to marry two persons, unless it appears that both requested him and were willing to be married. *Davis v. Black*, 1 Q. B. 900. A clergyman to whom two parties brought a registrar's certificate, and requested him to appoint a time for marrying them, refused to do so until they were willing to be confirmed. This was held not a sufficient demand to render him liable to an indictment. *Reg. v. James*, 2 Den. C. C. 1.

No clergyman is subject to any penalties, ecclesiastical or civil, for refusing to marry any person whose former marriage has been declared void on account of his or her adultery. 20 & 21 Vict. c. 85.

Unduly solemnizing Marriages.] By sect. 21 of the 4 Geo. 4, c. 76, any person solemnizing matrimony in any other place than a church, or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and twelve in the forenoon, unless by special licence from the Archbishop of Canterbury, or without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person falsely pretending to be in holy orders solemnize matrimony according to the rites of the Church of England, every person knowingly and wilfully so offending and being lawfully convicted thereof, is guilty of felony. But all prosecutions for such felony must be commenced within three years after the offence committed. The authority of the Ecclesiastical Courts is not taken away by the Marriage Acts, and a clergyman may still be punished there for publishing banns between persons not parishioners or resident in his parish, and marrying such persons. *Wynn v. Davies*, 1 Curt. 69.

By 6 & 7 Will. 4, c. 85, s. 39, every person, after the 1st of March, 1837, knowingly and wilfully solemnizing any marriage in

England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the Church of England, or than the registered building or office specified in the notice and certificate (except marriages between two Quakers or Jews according to the usages of such people), or knowingly and wilfully solemnizing any marriage in any such building or office in the absence of a registrar of the district in which such building or office is situated, or (except by licence) within twenty-one days after entry of notice to the superintendent registrar, or, if the marriage be by licence, within [one whole day, 19 & 20 Vict. c. 112, s. 9] after such entry, or more than three calendar months after such entry, shall be guilty of felony. See also 19 & 20 Vict., c. 119, s. 18.

By sect. 40, every superintendent registrar who knowingly and wilfully issues any certificate for marriage after the expiration of three calendar months after the notice has been entered by him, or any certificate for marriage by licence before the expiration of [one whole day, 19 & 20 Vict. c. 119, s. 9] after the entry of such notice, or any certificate for marriage without licence before the expiration of twenty-one days after the entry of such notice, or any certificate the issue of which shall have been forbidden by a person authorized so to do, or who knowingly and wilfully registers any marriage declared by the Act to be null and void, or any registrar [or superintendent registrar, 1 Vict. c. 22, s. 3], who knowingly and wilfully issues any licence for marriage after the expiration of three calendar months after notice has been entered by the registrar [or superintendent registrar, 1 Vict. c. 22, s. 3], or who knowingly and wilfully solemnizes in his office any marriage by the Act declared to be null and void, shall be guilty of felony.

Forging entries in a marriage register, or forging a marriage licence, is made a felony by 24 & 25 Vict. c. 98, ss. 35, 36, 37.

Prohibited Marriages.] The prohibited degrees are all those which are within the fourth degree of the civil law, except in the ascending and descending line; between collaterals, it is universally true that all who are in the fourth or any higher degree, are permitted to marry; thus, first cousins are in the fourth degree and therefore may marry; and nephew and great aunt, or niece and great uncle, are also in the fourth degree, and may intermarry; and though a man may not marry his grandmother, it is certainly true that he may marry her sister. *Gibs.* 413.

The same degrees by affinity are prohibited. Affinity is the relationship arising from marriage between one married party and the blood relations of the other married party; thus, a husband is related by affinity to all the *consanguinei* of his wife, and *vice versa*, the wife to the husband's *consanguinei*; for the husband and wife being considered one flesh, those who are related to the one by blood are related to the other by affinity. *Gibs.* 412. Therefore a man, after his wife's death, cannot marry her sister, aunt or niece, or daughter by her former husband. *2 Phil. Ecc. Cu.* 359. And a woman cannot marry her nephew by affinity, such as her former husband's sister's son. *2 Phil. Ecc. Cu.* 18. So a niece of a wife cannot, after the wife's death, marry the husband. *Noy, Rep.* 29. But the *consanguinei* of the husband are not at all related to the *consanguinei* of the wife. Hence two brothers may marry two sisters; or father and son, a mother and daughter; or, if a brother and sister marry two persons not related, and the brother and sister die, the widow and widower may intermarry, for though a man is related to his wife's brother by affinity, he is not so to his wife's brother's wife, whom, if circumstances would admit, it would not be unlawful for him to marry. *1 Bla. Com.* 435, n. As the rules of prohibition of marriage arise out of natural relationships, so illegitimate relations are within them. *Horner v. Horner*, 1 Hagg. Con. 352. See *Reg. v. St. Giles-in-the-Fields*, 11 Q. B. 173.

Before 5 & 6 Will. 4, c. 54, the disabilities arising from consanguinity and affinity were considered as constituting only a canonical impediment and rendering the marriage voidable during the lifetime of both the parties, but not void; but now, by sect. 2 of that Act, all marriages which are thereafter celebrated between persons within the prohibited degrees of consanguinity or affinity are made absolutely null and void. Hence a marriage with a deceased wife's sister is, since the date of that Act, absolutely void. *Reg. v. Chadwick*, 11 Q. B. 173.

By the 7 & 8 Vict. c. 101, s. 8, any officer of an union, parish or place who endeavours to induce any person to contract a marriage by threat or promise respecting any application to be made, or any order to be enforced, with respect to the maintenance of any bastard, shall be guilty of a misdemeanour.

Marriage Fees.] No fee is due to the clergyman of common right for performing the marriage ceremony, although it is said in the Rubric to the office of matrimony, that at the time of delivering

the ring the man shall also lay down the accustomed duty to the priest and clerk. But it may become payable, by custom, upon performance of the duty. See *Bryant v. Foot*, L. R. 3 Q. B. 497 ; 37 L. J. Q. B. 217.

Marriage of Jews or Quakers.] The Marriage Acts have an express exception of marriages where both parties are Quakers or Jews. And by 6 & 7 Will. 4, c. 85, s. 2, it is enacted, that where both parties are Quakers or Jews, they may contract and solemnize marriages according to the usages of their society and religion respectively, provided notice be given and a certificate issued, according to the provisions of the Act, notwithstanding the building where the marriage is celebrated be not within the district in which the parties dwell. 3 & 4 Vict. c. 72, s. 5 ; see also the 10 & 11 Vict. c. 58, which declares the validity of all such marriages.

By the 19 & 20 Vict. c. 119, s. 21, any marriage according to the usages of the Society of Friends, or of persons professing the Jewish religion, where the parties thereto are both members of the said society or both Jews, may be solemnized by licence (which the superintendent registrar to whom notice of the intended marriage has been given is authorized to grant, in the form or to the effect set forth in the schedule to the Act), as effectually in all respects as if such marriage were solemnized after the issue of a certificate. For marriage, according to the usages of the Society of Friends or Quakers, due notice must be given to the superintendent registrar of the district, or each of the districts in which the parties are residing. The statute 6 & 7 Will. 4, c. 25, required that the parties "be both of the said society." This requirement, however, has been modified by the 23 Vict. c. 18, and by 35 Vict. c. 10. When notice is given for marriage at a Friends' meeting-house, if both the parties are declared to be either members, or in profession with or of the persuasion of the society, the notice will be accepted without any corroboration of the statement ; but where both or either of the parties do not fall within this description, the certificate of a registering officer that they are authorised to marry according to the usages of the society must be produced to the superintendent registrar when the notice is given.

CHAPTER V.

BOOKS.

SECTION I. *Registers.*

II. *Parish Library.*

SECTION I.—REGISTERS.

Registration Acts.] By 52 Geo. 3, c. 146, s. 1, registers of public and private baptisms, marriages, and burials, solemnized according to the rites of the United Church of England and Ireland, within all parishes or chapelries in England, whether subject to the ordinary, peculiar, or other jurisdiction, shall be kept by the rector, vicar, curate, or officiating minister of every parish, or of any chapelry where baptisms, marriages, and burials have usually been performed. This Act, as well as the 4 Geo. 4, c. 76, so far as they relate to the registration of *marriages*, have been repealed by 6 & 7 Will. 4, c. 86, but as to an ecclesiastical register of *births* and *deaths* the law is not altered. See sect. 49. It will therefore be necessary to state the provisions of the 52 Geo. 3, c. 146, which relate to the registering of baptisms and burials.

Register Books.] By sect. 1, the registration is to be in books of parchment [if required by the church or chapelwardens, sect. 2] or durable paper, to be provided by his Majesty's printer, at the expense of the parish or chapelry, whereon shall be printed, on each side of every leaf, the heads of information herein required to be entered in the registers of baptisms and burials respectively; and every such entry shall be numbered and divided according to the forms in the schedules A. and C.

Entries of Baptisms or Burials.] The officiating minister is, as soon as possible (and never later than seven days, unless prevented by sickness or unavoidable impediment) after the solemnization of every baptism or burial, to enter in the proper register

book the required particulars, and sign the same. Sect. 3. Whenever the baptism or burial is performed in any other place than the church or churchyard of a parish, or chapel or chapelry of a chapelry providing its own registers, by any other minister than the rector, curate, &c., thereof, the minister performing it is, on that or the next day, to transmit to such rector, &c., or his curate, a certificate of such baptism or burial as in schedule D., who is thereupon to enter it in such book, adding to such entry, "According to the certificate of the Rev. —, transmitted to me on the — day of —," &c. Sect. 4.

By the 16 & 17 Vict. c. 134, s. 8, a register of burials in every burial-ground provided under the Acts for prohibiting interment in populous places (*ante*, p. 42) is required to be kept by an officer provided by the burial board. In such register it is to be distinguished in what part of the ground the bodies are buried. Entries in such registers are made evidence.

When any burial has taken place under the Burials Act, 1880 (*ante*, p. 59), the person having the charge of or being responsible for such burial is, on the day thereof, or the next day thereafter, to transmit a certificate of such burial to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate or to which it belongs, or, in the case of any burial ground or cemetery vested in any burial board, to the person required by law to keep the register of burials in such burial ground or cemetery, who is thereupon to enter such burial in the register of burials of such parish or district, or of such burial ground or cemetery, and such entry is to form part thereof. Such entry, instead of stating by whom the ceremony of burial was performed, is to state by whom the same has been certified under that Act. Any person who wilfully makes any false statement in such certificate, and any person receiving such certificate, who refuses or neglects duly to enter such burial in such register, is guilty of a misdemeanour. 43 & 44 Vict. c. 41, s. 10.

The form of certificate in the schedule of the Act is as follows:—

I, _____, of _____, the person having the charge of (*or* being responsible for) the burial of the deceased, do hereby certify that on the _____ day of _____, A.B. of _____, aged _____, was buried in the churchyard [*or* graveyard] of the parish [*or* district] of _____.

To the Rector [*or, as the case may be*] of _____.

Custody of Register Books.] The register books are to be kept by the rector, &c., in a chest, which is to be constantly kept locked, in his house, if resident within the parish, &c., or in the church or chapel, and is not to be removed therefrom, except for making entries, and for inspection of persons desirous to search or to obtain copies thereof, or to be produced as evidence in some Court. 52 Geo. 3, c. 146, s. 5.

Copies of Registers.] At the expiration of two months after every year's end, fair copies of all the entries of baptisms and burials, solemnized in the year preceding, are to be made by the officiating minister (or church or chapelwarden's clerk, or other person under his direction), and verified by the declaration of the minister, attested by one, at least, of the church or chapelwardens. Sect. 6. By sect. 7, copies of the register-books, so verified and attested, are to be transmitted to the registrars of the diocese, by the 1st June in each year. Alphabetical lists are to be kept by the registrars. Sect. 12.

In extra-parochial Places.] In cases of baptism or burial in an extra-parochial place where there is no church or chapel, the officiating minister is, within one month, to deliver to the rector, vicar, or curate of the parish immediately adjoining a memorandum of such baptism, signed by the parent of the child baptized, or of such burial, signed by the person employed therein, with two of the persons attending the same, containing the particulars hereinbefore required, which memorandum, so delivered, is to be entered in the parish register. Sect. 10.

False Entries or Copies.] See 24 & 25 Vict. c. 95, s. 5.

Extent of Act.] By sect. 20, the Act is to extend to cathedral and collegiate churches, chapels of colleges or hospitals, and their burying-grounds, and to the ministers officiating therein, although such churches, &c., be not parochial, and such ministers officiating therein may not be parochial ministers and there be no churchwardens thereof; and in all such cases the books are to be provided at the expense of the body having the right to appoint the officiating minister in every such cathedral, or collegiate church or chapel of a college or hospital; and copies thereof, attested by two of the officers of such church, &c., are to be transmitted to the registrar of the diocese by such officiating minister.

General Registry for Births, Deaths, and Marriages.] The 6 & 7 Will. 4, c. 86, provides for the establishment of a "General

Register Office," and the appointment of a Registrar-General, with power to make rules (with the approbation of a Secretary of State) for the management of the office, and the duties of the registrars, deputy and superintendent registrars. The Registrar-General is to send once a year to the Secretary of State an abstract of the number of births, deaths, and marriages registered during the year.

Registering Births.] It is the duty of the father and mother of every child born alive, and, in default of the father and mother, of the occupier of the house in which to his knowledge the child is born, and of each person present at the birth, and of the person having charge of the child, to give to the registrar, within forty-two days next after the birth, information of the particulars required to be registered, and in the presence of the registrar to sign the register. 37 & 38 Vict. c. 88, s. 1.

Where a birth has not been duly registered, the registrar may, at any time after such forty-two days, by notice in writing, require any of the persons required by sect. 1 to give information concerning the birth, to attend personally and to give information, and to sign the register, and it is the duty of such person to comply with such requisition. Sect. 2.

It is the duty of any person finding any living new-born child exposed, and of any person in whose charge it may be placed, to give, within seven days, to the registrar such particulars as to registration as the informant possesses. Sect. 3.

It is the duty of the registrar to inform himself carefully of every birth within his sub-district; and upon receiving personally from the informant, at any time within three months after the date of the birth of any child, or the finding of any living new-born child, information of the particulars required to be registered, forthwith to register the birth and particulars without fee or reward. Sect. 4.

By sect. 5, after the expiration of six months from the day of the birth, no registrar is to register the birth of any child unless the informant makes before the superintendent registrar a solemn declaration, according to the best of the declarant's knowledge and belief, of the particulars required to be registered concerning the birth, and signs the register in the presence of the registrar and the superintendent registrar; and, after the expiration of a year from the birth, it is not to be registered without the written authority of the Registrar-General.

Any person required by the Act to give information concerning a birth, who removes before such birth out of the sub-district in which such birth has taken place, may, within three months after such birth, give the information by making a declaration of the particulars of the birth before the registrar of the sub-district in which he resides. Sect. 6.

The father of an illegitimate child is not required to give information under the Act concerning the birth of such child, and the registrar cannot enter in the register the name of any person as father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child; and such person is, in such case, to sign the register, together with the mother. Sect. 7.

When the birth of any child has been registered and the name by which it was registered is altered, or, if it was registered without a name, the parent or guardian of such child, or other person procuring such name to be altered or given, may, within a year after the registration of the birth, have such name added to the register by delivering to the registrar a certificate signed by the minister or person who performed the rite of baptism upon which the name was given or altered, or, if the child is not baptized, signed by the person procuring the name of the child to be given or altered. Sect. 8.

The form of the certificate is given in the Schedule to the Act. Every minister or person who performs the rite of baptism is to deliver such certificate on demand, on payment of a fee not exceeding one shilling.

A registrar, upon demand made at the time of registering any birth by the person giving the information concerning the birth, and upon payment of a fee not exceeding 3*d.*, is to give such person a certificate of having registered that birth. Sect. 30.

Registering Deaths.] By sect. 14, the registrar is to inform himself of every death happening within his sub-district, and to register it without fee. When a person dies in a house it is the duty of the nearest relatives of the deceased present at the death, or in attendance during the last illness of the deceased, and, in default of such relatives, of every other relative of the deceased dwelling or being in the same sub-district as the deceased, and, in default of such relatives, of each person present at the death, and of the occupier of the house in which, to his knowledge, the death took

place, and, in default of such persons, of each inmate of such house, and of the person causing the body of the deceased person to be buried, to give, to the best of his knowledge and belief, to the registrar, within five days next following the day of such death, information of the particulars required to be registered. Sect. 10.

Where a person dies in a place which is not a house, or a dead body is found elsewhere than in a house, it is the duty of every relative of such deceased person having knowledge of any of the particulars required to be registered, and, in default of such relative, of every person present at the death, and of any person finding, and of any person taking charge of the body, and of the person causing the body to be buried, to give to the registrar, within five days next after the death or the finding, such information of the particulars required to be registered concerning the death as the informant possesses. Sect. 11.

If a person required to give information concerning any death sends to the registrar a written notice of the occurrence of the death, accompanied by such medical certificate of the cause of death as is required by the Act to be delivered to the registrar, the information of the particulars required to be registered need not be given within the five days, but must be given within fourteen days next after the day of the death. Sect. 12.

Where any death has, from the default of the persons required to give information concerning it, not been registered, the registrar may, at any time after the expiration of fourteen days, and within one year from the day of such death, or from the finding of the dead body elsewhere than in a house, by notice in writing, require any person required by the Act to give information concerning such death to attend personally at the registrar's office, to give such information to the best of the informant's knowledge. Sect. 13.

After the expiration of a year next after any death, or the finding of any dead body elsewhere than in a house, that death shall not be registered except with the written authority of the Registrar-General. Sect. 15.

When an inquest is held on any dead body, the coroner is to send to the registrar, within five days after the finding of the jury is given, a certificate under his hand giving information concerning the death, and specifying the finding of the jury as to the cause of death, and the registrar shall enter the death and particulars. Sect. 16.

The registrar, upon registering any death, or upon receiving a written requisition to attend at a house to register a death, or upon receiving written notice of the occurrence of a death, accompanied by a medical certificate, is forthwith, or as soon after as he is required, to give, without fee or reward, either to the person giving the information, or sending the requisition or notice, or to the undertaker or other person having charge of the funeral of the deceased, a certificate that he has registered or received notice of the death, as the case may be. Sect. 17.

Such certificate is to be delivered to the minister who officiates at the burial of the deceased. See *Burial*, p. 63.

Certificates of cause of Death.] The Registrar-General is to furnish to every registrar printed forms of certificates of cause of death by registered medical practitioners, and every registrar is to furnish such forms gratis to any registered medical practitioner residing or practising in such registrar's sub-district. Sect. 20.

In case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner shall sign and give, to some person required by the Act to give information concerning the death, a certificate, stating, to the best of his knowledge and belief, the cause of death, and such person shall deliver such certificate to the registrar.

If a person to whom such a medical certificate has been given fails to deliver that certificate to the registrar, he is liable to a penalty not exceeding forty shillings. Sect. 20.

Registration of Burials.] All burials in any burial ground shall be registered in register books, to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts. 27 & 28 Vict. c. 97.

A person is to be appointed to keep the books by the owners of the burial ground. Sect. 2.

Copies of such books are to be sent to the registrar of the diocese wherein the burial ground is situated. Sect. 3.

Registering Marriages.] By sect. 31 of 6 & 7 Will. 4, c. 86, every clergyman of the Church of England, immediately after solemnization of matrimony; every registering officer of the Quakers, as soon as conveniently may be after a marriage between

two Quakers ; and every secretary of a synagogue, immediately after a marriage between two Jews, shall register or cause to be registered, in duplicate in two of the marriage register books, the particulars required, according to the form C. The two latter officers are to satisfy themselves that the proceedings relating to the marriage are in conformity to the usages of the Quakers and Jews respectively. Every such entry in the register is to be signed by the clergyman, registering officer, or secretary, as the case may be, by the parties married and by two witnesses.

With regard to marriages under the 6 & 7 Will. 4, c. 85, the registrar is, by sect. 23, forthwith to register them in a book, furnished by the Registrar-General, according to the form C. in the Schedule annexed to 6 & 7 Will. 4, c. 86. Each such entry is to be signed by the person by or before whom the marriage is solemnized, by the registrar, the parties married, and attested by two witnesses. By 6 & 7 Will. 4, c. 85, s. 36, the registrar may ask of the parties to be married the particulars required to be registered ; and by 6 & 7 Will. 4, c. 86, s. 40, these questions may be asked by the clergyman, the registering officer of the Quakers, and the secretary of the synagogue.

Returns to Registrar-General.] By 6 & 7 Will. 4, c. 86, s. 29, the registrar is to make out a quarterly account of the births and deaths registered, which the superintendent registrar is to verify and sign ; for the first twenty entries of births and deaths (in each quarterly account, 37 & 38 Vict. c. 88, s. 31) he is to receive 2s. 6d. each, and for every subsequent entry 2s., to be paid by the guardians or overseers, and to be charged to the parish in which the birth or death occurred.

By sect. 33, every rector, vicar, and curate, and every registering officer of Quakers and secretary of Jews, is, at the like times, to deliver to the superintendent registrar true copies certified by him of all entries of marriages made by him ; and if none have been made, to certify that fact. When the duplicate register books are filled, one copy is to be sent to the superintendent registrar of the district, and the other to be kept by the rector, &c., or under the care of the Quakers or Jews.

Certified copies of the entries of marriages solemnized under the 6 & 7 Will. 4, c. 85, are to be sent by the registrar to the superintendent registrar. 6 & 7 Will. 4, c. 85, s. 24.

By 6 & 7 Will. 4, c. 86, s. 34, all the certified copies of the

registers of births, deaths, and marriages received by the superintendent registrar are to be by him transmitted quarterly to the Registrar-General. The superintendent registrar is to receive 2*d.* for every entry in such certified copies ; and he is to make out an account four times a year of the number of such entries.

Searches.] By sect. 35, every rector, vicar, or curate, and every registrar, registering officer, and secretary, is to allow searches to be made, and to give copies of entries, certified under his hand, on payment of 1*s.* for every search over a period of not more than one year ; 6*d.* additional for every additional year ; and 2*s.* 6*d.* for every single certificate. Minutes made by the party searching cannot be charged for, if an unreasonable time is not occupied. *Steele v. Williams*, 8 Exch. 625.

The superintendent registrar and Registrar-General are, by sects. 36, 37, to cause indexes to be made out, to allow searches, and give certified copies, between ten and four, on the payment of the following fees :—

Superintendent's office.		Registrar-General's office.	
General searches	... 5 <i>s.</i> 0 <i>d.</i>	General searches	... 20 <i>s.</i> 0 <i>d.</i>
Particular ditto	... 1 <i>s.</i> 0 <i>d.</i>	Particular ditto	... 1 <i>s.</i> 0 <i>d.</i>
Certified copies	... 2 <i>s.</i> 6 <i>d.</i>	Certified copies	... 2 <i>s.</i> 6 <i>d.</i>

The term “general search” means a search during any number of successive hours not exceeding six, without stating the object of the search ; and the term “particular search” means a search over any period not exceeding five years for any given entry. 37 & 38 Vict. c. 88, s. 42.

By sect. 38, all certified copies given at the Registrar-General's office are to be stamped and sealed with the seal of the register office ; and every such copy, purporting to be so stamped or sealed, is to be received as evidence of the birth, death, or marriage to which it relates.

SECTION II.—PARISH LIBRARY.

Parish Libraries.] The 7 Anne, c. 14, makes provision for the preservation and inspection of libraries given for the use of parishes.

In 1855 an Act (18 & 19 Vict. c. 70) was passed for promoting the establishment of free public libraries and museums in parishes.

On the requisition of ten ratepayers the overseers of any parish

must call a meeting of ratepayers to determine whether the Act shall be adopted for the parish. Sect. 8.

The ratepayers' opinions may be ascertained by voting papers. 40 & 41 Vict. c. 54.

A majority of one half the ratepayers may adopt the Act. 29 & 30 Vict. c. 114, s. 5.

If the meeting determine to adopt the Act it comes into operation, and the vestry appoint commissioners for carrying it into execution. 18 & 19 Vict. c. 70, s. 8.

Vestries of two or more neighbouring parishes may adopt the Act, and concur in carrying it into execution. Sect. 14.

Parishes adjoining a borough may unite in adopting the Act. 29 & 30 Vict. c. 114, s. 4.

Expenses of executing Act in any parish to be paid out of a rate not exceeding 1*d.* in the pound. 18 & 19 Vict. c. 70, s. 15.

CHAPTER VI.

PARISH VESTRIES.

- SECTION I. *Vestry Meetings.*
 II. *Proceedings in Vestry.*
 III. *Power of Vestries.*
 IV. *Vestry Clerk.*
 V. *Select Vestries by Custom.*
 VI. *Vestries under 1 & 2 Will. 4, c. 60.*
 VII. *Vestries under the Metropolis Management Act.*
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SECTION I.—VESTRY MEETINGS.

Vestry, where held.] A vestry, properly speaking, is the assembly of the whole parish, met together in some convenient place for the despatch of the affairs and business of the parish; and this meeting being formerly held in the vestry adjoining to or belonging to the church, it thence took the name of vestry, as the place itself doth from the priest's vestments, which are usually deposited and kept there. *Shaw's Par. L. c. 17.*

Where held.] It was never, indeed, essential to the validity of the meeting that it should be held in the vestry or in the church; but, if held in either of those places, the Ecclesiastical Court had jurisdiction *ratione loci* over any misconduct or disorder committed therein. *Wenmouth v. Collins*, 2 *Ld. Raym.* 850; *Wilson v. M'Math*, 3 *B. & Ald.* 241. More licence is permitted in the vestry room than would be considered excusable in the church, as the vestry is the place for parish business, and the Court would not interpose in such case, further than might be necessary for the preservation of due order and decorum. *Hutchins v. Denziloe*, 1 *Hagg. R.* 185.

In order to obviate the scandal and inconvenience arising from vestry and other parochial meetings being held in the church or

vestry, power is given by the 13 & 14 Vict. c. 57, and 34 & 35 Vict. c. 70, to the Local Government Board, upon the application of the churchwardens, pursuant to a resolution of the vestry, to make orders, at the expiration of twelve months from the publication of which no vestry meeting is to be held in the church, or except in case of urgency, in the vestry room attached thereto; and power is given to provide other places for holding such meetings.

Notice of Vestry.] These meetings are usually assembled according as the exigencies of the parish require. By the 58 Geo. 3, c. 69, s. 1, as altered by the 7 Will. 4 & 1 Vict. c. 45, no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and of the special purpose thereof, three days before the day to be appointed for holding such vestry. See *Reg. v. Best*, 5 Dowl. & L. 40.

The publication of such notice is to be made by written or printed copies of it being affixed on or near to the principal doors of all the churches or chapels within the parish or place, previously to the commencement of divine service. The notice must, before it is affixed, be signed by a churchwarden, or by the rector, vicar or curate of the parish, or by an overseer. 7 Will. 4 & 1 Vict. c. 45, s. 3. The notice need only be fixed on the *principal* doors of all churches and chapels in which divine service is actually performed, and *semble*, this does not extend to private or proprietary chapels. *Ormerod v. Chadwick*, 16 M. & W. 367; see *Reg. v. Marriott*, 12 A. & E. 779; *Reg. v. Whipp*, 4 Q. B. 141.

It is usual for one of the church bells to be tolled for half an hour before the meeting begins, to give the parishioners notice of their assembling together. *Shaw's Par. L. c. 17.*

By whom called.] Vestries for church matters regularly are to be called by the churchwardens, with the consent of the minister. If the minister and churchwardens improperly refused to give the notices for calling a vestry meeting, a *mandamus* would issue to compel them to do so. *Prideaux on Churchw. s. 35.* A private parishioner has no right, of his own authority, to publish a notice for a vestry, but may publish notice of business to be considered at a vestry meeting which has been duly convened. *Dawe v. Williams*, 2 Add. Rep. 138.

It appears to be essential to the validity of the proceedings of

the vestry that the notice should clearly point out the special purposes for which the vestry meeting is to be called. *Smith v. Deighton*, 8 Moore P. C. 180.

The following notice has been held sufficient:—"Notice is hereby given; the churchwardens, overseers, and other principal inhabitants of this parish are requested to meet in vestry on, &c., to examine the churchwardens' accounts, and to grant them a rate." *Rund v. Green*, 30 L. J. C. P. 80. Also a notice that the vestry meeting was "for the purpose of granting a church rate for and towards the repair and expenses of the parish church" was held sufficient, although an estimate for the completion of some windows of the church was to be considered. *Gough & Cartwright v. Jones*, 11 W. R. 107.

The vicar and churchwardens of a parish have power to fix the hour of holding vestry meetings, and the parishioners cannot, by *mandamus*, compel them to alter it. *R. v. Churchwardens of Tottenham*, L. R. 4 Q. B. D. 367; 49 L. J. Q. B. D. (C. A.) 870.

Who may attend a Vestry.] Anciently, by the common law, every parishioner who paid to the church rates, or scot and lot, and no other person, had a right to come to these meetings.* The minister hath a special duty incumbent on him in this matter, and is responsible to the bishop for his care herein; and, therefore, in every parish meeting he presides for the regulating and directing this affair; and this equally holds, whether he be rector or vicar. *Shaw's Par. L.* c. 17. Residence within the parish is not a necessary qualification, as all out-dwellers occupying land in the parish have a vote in the vestry, as well as the inhabitants. *Johns*. 19.

But no person who has refused or neglected to pay any rate for the relief of the poor, which is due from and has been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate was made, until he has paid the same. 59 Geo. 3, c. 85, s. 3. This enactment is modified by 16 & 17 Vict. c. 65, which provides that no person shall be required, in order to be entitled to vote or to be present at any vestry meeting, to have paid any rate for the relief of the poor of

* In old parishes every ratepayer (apparently of either sex) has a right to attend vestry. In new parishes and districts formed under the Church Building Acts the franchise varies considerably. Usually, however, it is restricted to resident householders.

the parish in which such meeting shall be held, which shall have been made or become due within three calendar months immediately preceding such vestry meeting. And it is further modified by 32 & 33 Vict. c. 41, which provides that where the rateable value of the hereditament does not exceed 20*l.* if situate in the metropolis, 13*l.* if situate in any parish wholly or partly within the city of Liverpool, 10*l.* if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or 8*l.* if situate elsewhere, by order of the vestry, the owner may be rated to the poor rate instead of the occupier. Also, where there is a written agreement between the owner of such an hereditament and the overseers for the payment of the rate. Also, that every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as therein provided; and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, *shall be deemed a payment of the full rate by the occupier* for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor-rate. Sect. 8 authorises the occupier to pay the rate, if the owner omits or neglects to do so, and to deduct the amount from his rent.

Where any person has become an inhabitant of any parish, or liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he is to be entitled to vote for and in respect of the lands, tenements and property for which he has become liable to be rated and consents to be rated, in like manner as if he had been actually rated for the same. 58 Geo 3, c. 69, s. 4.

By the 59 Geo. 3, c. 85, s. 1, any person who is assessed and rated for the relief of the poor, in respect of any annual rent, profit or value arising from any lands, tenements or hereditaments, situate in any parish in which any vestry is holden under the former Act, although he does not reside in, or is not an inhabitant of such parish, may lawfully be present at such vestry, and is entitled to give such and so many votes at such vestry, in respect of the amount of such rent, profit or value, as by the said Act any inhabitant of such parish, present at such vestry, might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes, as if such person were an inhabitant of such parish. By

sect. 19 of 32 & 33 Vict. c. 41, the overseers, in making out the poor rate, are in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, to enter in the occupiers' column in the rate book the name of the occupier of every rateable hereditament, and such occupier is to *be deemed to be duly rated* for any qualification or franchise which, as regards rating, depends upon the payment of the poor rate; with a proviso that any occupier whose name has been omitted is, notwithstanding such omission, and that no claim to be rated has been made by him, to be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been omitted.

An action will, it seems, lie for excluding from the vestry a duly qualified parishioner. *Vin. Abr. "Vestry;" Phillybron v. Ryland*, 1 Str. 624; *Reg. v. St. Mary, Lambeth*, 8 A. & E. 356.

SECTION II.—PROCEEDINGS IN VESTRY.

Chairman of Vestry.] The minister has a right to preside at all vestry meetings; for he is not a mere individual of the vestry; on the contrary, he is always described as the first, and as an integral part of the parish; the form of citing a parish being, "the *minister*, churchwardens and parishioners." In sound legal principle he is the head and *præses* of the meeting. *Wilson v. M'Math*, 3 Phil. Ecc. Ca. 87; 3 B. & Ald. 246, *note*. And this right exists equally whether the meeting be held in the church or elsewhere. *Reg. v. D'Oyly*, 12 A. & E. 139. The 58 Geo. 3, c. 69, s. 2, provides that in case the rector or vicar, or perpetual curate, is not present, the persons assembled shall forthwith nominate, by plurality of votes, to be ascertained as is directed by the Act, one of the inhabitants to be chairman; which seems to imply that if the rector, vicar or curate be present he shall preside. *Ibid.* The chairman must be careful that all the proceedings are conducted regularly and legally; but if there should have been irregularity through mistake or inadvertance, it would not necessarily follow that the proceedings would be held void. *Tiarks v. Hutton*, L. R. 1 Ecc. 270; 35 L. J. Ecc. Cas. 14. The result of the poll must be announced in open vestry. It is generally better, as regards disputed votes, to adjourn the poll for a scrutiny, than to discuss the votes when tendered, but the chairman may decide as to

the validity of the votes tendered. A scrutiny cannot be demanded as a matter of right. *R. v. Vicar of Hammersmith*, 3 B. & S. 504 (n); 19 L. T. 203.

Adjournment.] It is laid down in an old case (*Stoughton v. Reynolds*, 2 Str. 1045), that the right of adjourning a vestry is in the meeting at large; but it has since been decided that this right is in the chairman, if circumstances render an adjournment indispensable, especially where it is for the purpose of taking a poll. *R. v. Archdeacon of Chester*, 1 A. & E. 342; *Baker v. Wood*, 1 Curt. 507; *Reg. v. D'Oyly*, 12 A. & E. 139. This right, however, must be exercised by the chairman for the purpose of facilitating the proceedings of the meeting; and if it were resorted to improperly for the purpose of interrupting or procrastinating the business, the Queen's Bench Division would interfere. *Ibid.*

Where notice of the purpose of a meeting was duly given, and certain business was there begun, and the meeting was regularly adjourned, the same business might be concluded at the adjourned meeting, although the notice for the adjourned meeting did not state the purpose for which it was summoned. *Scadding v. Lorant*, 3 H. L. Ca. 418.

Voting—Plurality of Votes.] The 58 Geo. 3, c. 69, makes some important regulations with respect to the mode of voting in vestries, giving to property a greater influence in these matters than is possessed under the former system. The third section of the Act provides, that every inhabitant present, who by the last rate made for the relief of the poor shall have been assessed in respect of any annual rent, profit or value, not amounting to 50*l.*, shall give one vote and no more; if assessed for any such annual rent, &c., amounting to 50*l.* or upwards (whether in one or more than one sum or charge), he is entitled to give one vote for every 25*l.* in respect of which he shall have been assessed; but so that no inhabitant shall give more than six votes; and where two or more of the inhabitants present are jointly rated, each is to vote according to the proportion borne by him of the joint charge; and where only one of the persons jointly rated attends, he is to vote according to the whole of the joint charge. Sect. 3.

This scale of voting applies not only to matters at common law determinable by the vestry, but also to other things required by statute to be there done; as where a local Act establishing guardians directed that vacancies should be annually filled up by the inhabit-

ants assembled in vestry, who were to elect persons in the room of those going out, it was held that the inhabitants were to vote according to sect. 3. *R. v. Clerkenwell*, 1 A. & E. 317. Where, however, in a parish, the poor rates had, according to ancient custom, been always assessed without regard to the annual value of property in the parish, but according to the supposed ability of the party assessed, it was held, that persons so rated were not entitled to the plurality of votes, although assessed in respect of property exceeding the annual value of 50*l.* *Nightingale v. Marshall*, 2 B. & C. 313; 3 D. & R. 549. And where feoffees of a charity were directed to do certain acts only in a vestry or meeting of the said feoffees, and of ten of the inhabitants of the parish who should be vestrymen in the parish and not feoffees, it was held, that the votes were to be taken *per capita*, and not according to this Act. *Att.-Gen. v. Wilkinson*, 3 B. & B. 266; 7 Moore, 187.

Votes of Companies, &c.] The clerk, secretary, steward, or agent, duly authorised for that purpose, of any corporation or company, may vote on behalf of his corporation or company. Sect. 2. But no such clerk, &c., is to be entitled to be present or to vote, unless all rates for the relief of the poor assessed and charged upon or in respect of the rent, &c., in right of which such clerk, &c., claims to be present and vote, which are due and have been duly demanded before the meeting, have been paid. Sect. 3.

Mode of taking Votes.] In matters determined upon at vestry meetings there must be a majority of the votes of those present in favour of the resolution; those who refuse to take part in the proceedings cannot be treated as absent. *Re Eynshaw*, 12 Q. B. 398, n. The mode of taking the votes may therefore be important.

After an adjournment of the meeting for the purpose of taking a poll, and when the result of the poll has been declared, no further amendments can be moved. *R. v. Roberts & May*, 32 L. J. M. C. 153.

The common law mode of election is by show of hands, or by poll; and the party electing is then said to have a voice in the election. It is clear that, at common law, where parties have the right of voting, the restriction of voting by ballot cannot be imposed; it presents an insurmountable difficulty to a scrutiny, because no person can tell for whom a particular individual voted; see *Faulkner v. Elger*, 4 B. & C. 449; besides, under the Vestry Act, where one person may have any number of votes to the

amount of six, other objections might present themselves to voting by ballot. It is therefore evident that the common law mode of voting ought to be adhered to. These reasons are equally cogent against voting by proxy. But an election by a committee reducing the number of candidates, and selecting one of the reduced number, is not necessarily bad. *Ex parte Lecrew*, 2 Dowl. & L. 571.

Where several persons are put in nomination, and more than one is to be elected, a show of hands will not decide the election; and where a plurality of votes is allowed, a poll is absolutely necessary; *Campbell v. Maund*, 5 A. & E. 865; *R. v. Rector of Birmingham*, 7 A. & E. 254; and it is no objection in such a case that the chairman directed a poll without taking a show of hands, though one was demanded. *Ibid.* A poll is generally demandable, as a matter of right, provided the question before the meeting be a legal one; the decision of the chairman upon the show of hands is not conclusive. *R. v. St. Saviour's*, 1 A. & E. 380; *Reg. v. St. Pancras*, 11 A. & E. 15; *R. v. Cooper*, L. R. 5 Q. B. 457. All qualified persons are entitled to vote at the poll, whether present at the show of hands or not; and a resolution confining the poll to those who were so present is inoperative. *Reg. v. St. Mary, Lambeth*, 8 A. & E. 356; *Reg. v. Hedger*, 12 A. & E. 139.

A *mandamus* to proceed to a new election, on account of the improper rejection of votes, will not be granted, unless it is shown that the result would have been altered by the reception of the votes. *Ex parte Mawbey*, 3 E. & B. 718.

If there is no other business and it can be done conveniently, the poll should be taken immediately; but the chairman is the proper person to determine this. *Reg. v. D'Oyly*, 12 A. & E. 139; *Reg. v. St. Mary, Newington*, 6 Dowl. & L. 162.

The doors of the vestry must be kept open during the poll. *Reg. v. St. Mary, Lambeth*, 8 A. & E. 356. And the poll should be kept open a sufficient time to enable all to exercise their privilege, regard being had to the numbers and the distance at which they reside. *Baker v. Wood*, 1 Curt. 507. Where there is a custom to determine the period of polling, it must be abided by, provided the time be reasonable. Neither the electors nor the chairman can abridge the time. *R. v. Commissary of Winchester*, 7 East, 573.

By 58 Geo. 3, c. 69, s. 2, in all cases of equality of votes, the chairman shall (in addition to such vote or votes as he may by

virtue of the Act be entitled to give in right of his assessment) have the casting vote.

Signing the Proceedings.] The proceedings are by the same section *required* to be signed by the chairman, and such of the inhabitants present as shall think proper *may* also sign them. But they incur no separate or individual responsibility for anything which may be done in pursuance of a resolution of vestry so signed by them. Thus vestrymen, who sign a resolution ordering the parish surveyor to take steps for defending an indictment for not repairing a road, are not responsible for the payment of the attorney employed by the surveyor; *Sprott v. Powell*, 3 Bing. 478; for in signing the resolution, they act merely as vestrymen, without any intention of becoming individually responsible. *Lanchester v. Tricker*, 1 Bing. 201; *Lanchester v. Frewer*, 2 Bing. 361. But if the resolution expressly guarantees the payment of the expenses, all those who sign it are individually liable. *Heudebourck v. Langton*, 10 B. & C. 546.

SECTION III.—POWER OF VESTRIES.

Control in Parish Matters.] The matters which are under the control of the parishioners assembled in vestry are neither numerous nor important, since the abolition of compulsory church rates and the institution of sanitary authorities. The vestry has to determine the expediency of enlarging or altering the churches and chapels, or of adding to or disposing of the goods and ornaments connected with those sacred edifices. The election of some of the parish officers is either wholly or in part to be made by the vestry, and it has either directly or indirectly a superintending authority in all the weightier matters of the parish. The vestry has, as such, no authority in the distribution of pews, though an expression of its opinion ought to weigh with the churchwardens, as being that of the parish. *Pettman v. Bridger*, 1 Phil. Ecc. Ca. 316. See *ante*, p. 23. But where a local Act gives the vestry power to appropriate seats, this authority supersedes the common law right. *Spry v. Flood*, 2 Curt. 362.

There are several matters in which particular duties are cast by statute upon the vestry, some of which will be found in other parts of this work. As to the election of churchwardens by the vestry, see tit. CHURCHWARDENS, Chap. III., Sect. 5.

The vestry have also a power by the 13 & 14 Vict. c. 99, s. 1, to order that the owners of tenements, the yearly rateable value of which does not exceed 6*l.*, be rated instead of the occupiers. See *post*, POOR RATE, Chap. X., Sect. 4.

Acts of Vestry binding.] If a vestry is called, every parishioner ought to attend, or, if he do not, he is bound by the acts of those who do. *Clutton v. Cherry*, 2 Phil. Ecc. Ca. 380. But the acts of one vestry are not absolutely binding on a succeeding vestry; they may be confirmed or rescinded; though the confirmation of the succeeding vestry is not necessary to make the acts of the preceding one valid. *Mawley v. Barbet*, 2 Esp. 687.

Extent of General Vestry Act.] The provisions of the 58 Geo. 3, c. 69, are expressly extended (sect. 7) to all townships, vills and places, having separate overseers of the poor, and maintaining their poor separately; and all its directions and regulations in regard to vestries are to extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill or place for any of the purposes in the Act expressed; and the notices of vestry meetings may, in places where there is no parish church or chapel, or where divine service is not performed in such church or chapel, be given and published in such manner as notices of the like nature are there usually published, or as is most effectual for communicating the same to the inhabitants thereof. But this is not to alter the time of holding any vestry, parish or town meeting, which is by the authority of any Act required to be holden on any certain day, or within any certain time in such Act prescribed and directed; nor to take away, lessen, prejudice or affect the powers of any vestry or meeting holden in any parish, township or place, by virtue of any special Act, or of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden. Sect. 8.

The provisions of the Act do not apply to any parish within the City of London, or in the borough of Southwark. Sects. 9, 10.

Vestry Books to be kept.] The 58 Geo. 3, c. 69, s. 2, directs that the minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book, to be provided for the purpose by the churchwardens and overseers of the poor, and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same. See *ante*, Chap. V.

And by sect. 6, as well the books directed to be provided by the Act, and kept for the entry of the proceedings of vestries, as all former vestry-books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor and surveyors of the highways and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, public papers of every parish (except the registry of marriages, baptisms and burials), are to be kept by such person, and deposited in such place and manner, as the inhabitants, in vestry assembled, direct; and if any person in whose hands or custody any such book, &c., is, wilfully or negligently destroys, obliterates or injures the same, or suffers the same to be destroyed, &c., or, after reasonable notice and demand, refuses or neglects to deliver the same to such person, or to deposit the same in such place as by order of any such vestry is directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of one or more credible witness or witnesses, before two justices, upon complaint thereof to them made, shall for every such offence forfeit and pay such sum, not exceeding 50*l.*, nor less than 40*s.*, as the justices adjudge and determine, to be recovered and levied by warrant of the justices, in such manner and by such means as poor rates in arrear are by law to be recovered and levied, and to be paid to the overseers of the poor of the parish against which the offence is committed, or to some of them, and applied towards the relief of the poor thereof. But every person unlawfully retaining in his custody, or refusing to deliver to any person authorised to receive the same, or obliterating, destroying or injuring, or suffering to be obliterated, &c., any book, &c., belonging to any parish, or to the churchwardens, overseers of the poor or surveyors of the highways, may be proceeded against, civilly or criminally, as if this Act had not been made.

The Vestry Acts apply only to parishes and places having separate overseers of the poor, and maintaining their poor separately. *R. v. Barrow*, L. R. 4 Q. B. 577. They do not therefore apply to parishes or other districts created under the Church Building Acts for ecclesiastical purposes only, except where and to the extent that they may be made applicable by the parish, and by the statute regulating the proceedings of the district vestry. *Prideaux's Churchwardens' Guide*, p. 172.

SECTION IV.—VESTRY CLERK.

Election and Duty.] The vestry clerk is an officer chosen by the vestry, and acts as registrar or secretary thereto, but he has no right to vote upon or take part in the questions submitted to the vestry. His business is to attend at all parish meetings, and to draw up and copy all orders and other Acts of the vestry, and to give out copies thereof when necessary; and therefore he hath the custody of all books and papers relating thereto. *Shaw's Par. L. c. 18.* But although it is his duty to produce such books and papers, and permit copies to be taken for the ordinary parish purposes, or when they are wanted for the purpose of advancing any parochial right, he cannot be compelled to furnish such documents if they are required for any mere personal object, as for the purpose of affording evidence against himself, in an action of libel brought by an inhabitant of the parish. *May v. Gwynne*, 4 B. & Ald. 301. If the parish books be in the custody of any other person, it seems the vestry clerk may have a *mandamus* to compel the delivery of them to him. *R. v. Croydon*, 5 T. R. 713. Though in a later case, where the application was against a churchwarden, Lord Ellenborough said, "If the muniments belong to the vestry clerk, as annexed to his office, he may bring an action of detainer or trover;" and refused the rule. *Anon.*, 2 Chit. R. 255. This decision rests upon the general rule that, in all cases where a *mandamus* is applied for, there should be a specific legal right, as well as the want of a specific legal remedy. See *R. v. Archbishop of Canterbury*, 8 East, 213; *R. v. Stoke Damerel*, 5 A. & E. 584; and see *R. v. Severn and Wye Rail. Co.*, 2 B & Ald. 646. The 58 Geo. 3, c. 69, s. 6 (*ante*, p. 173), gives the right to the custody of parish books, not to the vestry clerk, but to such person as the vestry appoint.

Appointment in populous Parishes.] By the 13 & 14 Vict. c. 57, s. 6, in parishes the population whereof exceeds 2,000, according to the last preceding census, and in which the Poor Law Commissioners have made an order for the appointment of a vestry clerk, the churchwardens or other persons to whom it belongs to convene meetings of the vestry are, within one calendar month after the publishing of such order, and also, in case of any subsequent

vacancy in the office of vestry clerk, within one calendar month after such vacancy, to convene a meeting of the vestry for the special purpose of electing a vestry clerk to perform such of the duties in the Act specified as are applicable to such parish, in addition to those imposed on vestry clerks by any Act of Parliament. Public notice of such vestry and the place of holding the same and of the special purpose thereof is to be given in the usual manner, at least seven days before the day appointed for holding the vestry; and at such meeting the vestry are to elect a fit and competent person to be vestry clerk.

Duties.] By sect. 7, the duty of such vestry clerk, unless otherwise directed by the Poor Law Commissioners, is—

To give notice of and attend meetings of the vestry, and committees appointed thereat.

To summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof.

To keep the account of charity moneys distributed by the churchwardens or overseers.

To keep the vestry books, parish deeds, &c., rate books and accounts which are closed, and to give copies of and extracts from the same at the rate of 4*d.* for seventy-two words, and to permit all ratepayers of the parish to inspect them at reasonable times, on pain of dismissal for neglect.

Where there is no collector of poor rates or assistant overseer, to make out the poor rate and procure its allowance, and to make all subsequent entries in the rate books, and to give the notices thereof required by law.

To prepare and issue the necessary process for recovering arrears of such rates, and to procure the summons to be served, and to attend the justices thereon, and to advise the churchwardens and overseers as to the recovery of such arrears.

To keep and make out the churchwardens' accounts, and to present them to the vestry or other legal authority to be passed; and to examine the collectors' accounts and returns of arrears.

To assist the overseers in making out their accounts (whenever required by them), and, subject to the rules of the Poor Law Commissioners, to examine the accounts of the assistant overseers and collectors of poor rates and their returns of arrears.

To attend the audit of overseers' accounts and conduct all correspondence arising therefrom.

To assist the churchwardens and overseers in preparing and making out all other parochial assessments and accounts, and in examining the accounts of the collectors of such assessments.

To ascertain and make out the list of persons liable to serve on juries, and to cause them to be duly printed and published and returned to the justices.

To give the notices for claims to vote for members of Parliament ; to make out lists of voters, and get them printed and published and duly returned, according to law ; to attend the Revising Court ; and to prepare, make out and publish the burgess lists and lists of constables.

To make all returns required of the churchwardens or overseers by law or proper authority.

To advise the churchwardens and overseers in all the duties of their office ; and to perform such other duties and services of a like nature as the Local Government Board from time to time, at the request of the churchwardens or overseers, or otherwise, may prescribe and direct. The preparation of the valuation list required by the Valuation (Metropolis) Act, 1869, is not one of the general duties of the vestry clerk, and his claim for preparing such valuation list is not limited to his expenses. *R. v. Cumberlege*, L. R. 2 Q. B. D. 366 ; 46 L. J. M. C. 214.

Churchwardens, &c., not discharged.] By sect. 9, nothing in the Act is to exempt or discharge any churchwarden or overseer from the performance of any duty required of him by law, or to oblige him to avail himself of the assistance of the vestry clerk, unless he thinks fit to do so.

Extent of the Act.] By sect. 10, "parish" includes every place having separate overseers of the poor and maintaining its own poor, and also every parish or place having a separate ecclesiastical jurisdiction, and in which a vestry has been heretofore constituted and held for parochial as well as ecclesiastical purposes, either separately or jointly with any other parish ; "churchwarden" includes chapelwardens or other persons discharging the duties of churchwardens in any such place as last aforesaid ; and "vestry" means the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in parishes where there is a select vestry elected under the 59 Geo. 3, c. 12, or the 1 & 2 Will. 4, c. 60, or any local Act for the government of a parish by vestries, or under any prescription, custom or otherwise, in which parishes it is to mean select vestry.

Duration of Office.] The office of vestry clerk is, in ordinary cases, not a fixed and permanent one for which a *mandamus* will lie. It generally depends altogether on the will of the inhabitants, who may appoint a different clerk at each vestry, notwithstanding any supposed agreement made by the parishioners that it should be an annual office. *R. v. Croydon*, 5 T. R. 713.

Where, however, there has been an order of the Poor Law Board to elect a vestry clerk under the 13 & 14 Vict. c. 57, it is obligatory on the churchwardens to convene a vestry for the purpose of appointing a clerk or filling up a vacancy in the office, as required by sect. 6, which also provides, "that the person so elected shall not be removable from office, except by a resolution passed at a vestry to be called for that special purpose," and with the consent of the Poor Law Board, or by an order under their seal.

Salary.] No salary is annexed to this office, unless it be so expressly provided by Act of Parliament.

By the 13 & 14 Vict. c. 57, s. 8, where a vestry clerk is required to be appointed by order of the Poor Law Board, the amount of salary or other remuneration to be paid to him, as well as the days and times on which and the persons by whom the same shall be payable, shall be fixed by the said commissioners, and allowed from time to time as there shall be occasion; and such salary or remuneration shall be chargeable upon and paid out of the money to be raised for the relief of the poor in the parish; and, if the commissioners deem it requisite, the vestry clerk is to give such security and to such persons as they direct by order under seal. Where, under the provisions of any local Act of Parliament, any person is paid for performing the duties of vestry clerk, or assisting in the performance of any of the duties of the churchwardens or overseers, the Act is not to extend to the performance of such duties, while they are so performed, or while payment is made for their performance as aforesaid.

SECTION V.—SELECT VESTRIES BY CUSTOM.

Origin.] Select vestries seem to have grown up from the practice of choosing a certain number of persons yearly to manage the concerns of the parish for that year; which by degrees came to be a fixed method, and the parishioners lost not only their right to concur in the public management as oft as they would attend, but also

in most places, if not in all, the right of electing the managers. And such a custom, for the government of parishes by a select number, hath been adjudged a good custom, in that the churchwardens accounting to them was adjudged a good account. *Gibbs*. 219.

In some parishes these select vestries having been thought oppressive and injurious, great struggles have been made to set aside and demolish them. *Shaw's Par. L.* c. 17. And no wonder that it hath been so in parishes where by custom they have obtained the power to choose one another, for it is not to be supposed but that, if they are guilty of evil practices, they will choose such persons as they think will connive at or concur therein. 1 *Burn's Ecc. L.* 415, r.

Such is the language employed by writers upon the subject more than half a century ago ; and the history of select vestries, in more recent times, affords no sufficient ground for believing that the censure is no longer applicable. All experience demonstrates that governing bodies, whose powers are wielded in the secret conclave, uncontrolled by a higher authority or the influence of public opinion, become in time corrupt ; not always from bad motives actuating the conduct of the members of such bodies, but from that very love of ease, and the consequent neglect of duty, which is considered as the counterpoise of that love of power which induces men, in the first instance, to take upon themselves, gratuitously, the burthen of administering public affairs. The propriety, therefore, of inquiring into the foundation of such institutions, in order to ascertain the just limits of their authority, and the responsibility under which it is exercised, is obvious.

Founded on Immemorial Usage.] Until the 59 Geo. 3, c. 12, select vestries could exist by custom or prescription alone. Wherever, therefore, a select vestry assumes to itself the management of the affairs of a parish, its authority must rest upon the foundation of special usage from time immemorial ; and none, except those established under some statute, can have any other legal origin. *Shaw's Par. L.* c. 17 ; *Goodall v. Whitmore*, 2 Hagg. Ecc. R. 374. It is quite settled that a select vestry cannot be constituted by a faculty from the bishop. *Berry v. Banner*, Peake, N. P. R. 156.

Requisites of Custom.] When a select vestry is shown to exist by custom, the next inquiry is into the legality of it, for if it is

not a good custom, it ought to be no longer used—*Malus usus abolendus est*. *Litt. s.* 212; 4 *Inst.* 274. It has been already stated that a custom, to be valid, must have existed immemorially. If any one can show the beginning of a custom, it is no good custom; for which reason no custom can prevail against an express Act of Parliament, since the statute itself is a proof of there being a time when such a custom did not exist. *Co. Litt.* 113, 115.

The memory of man is taken in law to run from the beginning of the reign of Richard the First; consequently, if it can be shown that the custom commenced at any time since, or did not exist during any part of that period, it is invalid. But a regular usage for twenty years, unexplained and uncontradicted, is sufficient to warrant a jury in finding an immemorial custom. *R. v. Joliffe*, 2 B. & C. 54; 2 *Will. Saund.* 175 a, d.

Must be Continuous.] It must have been continuous. Any interruption would cause a temporary ceasing; and the revival giving it a new beginning within time of memory, the custom will be void. But this must be understood with regard to an interruption of the *right*; for an interruption of the *exercise of* the right only will not destroy the custom, though it renders it more difficult to prove the existence of the right.

Thus, where a select vestry by custom consisted of an indefinite number, but a faculty was obtained, naming forty-nine persons, together with the vicar and churchwardens, to constitute the body in future, and appointing that number to be kept up, by election to be made by ten at least, together with the vicar and churchwardens; and afterwards, another faculty was obtained, reducing this number of ten to seven; and these faculties had been constantly acted upon for upwards of sixty years; it was held, that the custom was not thereby destroyed; because, in the first place, these faculties, though acted upon, had no validity in law; and next, it appeared that ten out of the fourteen vestrymen who were present at the vestry holden immediately before the promulgation of the first faculty, were part of the forty-nine named in that faculty; and lastly, the vestry, as appointed by the faculty, and as it had since continued, was not inconsistent with the vestry previously existing by the custom; and therefore there was not, either in fact or in law, any discontinuance. *Golding v. Fenn*, 7 B. & C. 765. Where by custom, a select vestry was to consist of the rector, churchwardens and those who had served the office of upper churchwarden, and

other parishioners to be elected by the vestrymen ; but the practice, in modern times, had been to elect those parishioners only who had been fined for not serving the office of upper churchwarden, these latter were held to be well elected. *R. v. Brain*, 3 B. & Ad. 614. A select vestry consisted of the parson and those who had served the office of churchwarden or paid a fine for not serving. The vestry elected the churchwardens. From the earliest time to the present, with four or five exceptions, a new person was elected junior churchwarden every year, and became senior churchwarden the next year. It was held, that this custom required a person, not a member of the vestry, to be appointed junior churchwarden ; and that the appointment of a member of the vestry to the office was void. *Gibbs v. Flight*, 3 Com. B. 581. But if the *right* be any how discontinued, even for a day, the custom is at an end. 1 *Black. Com.* 77.

Must be acquiesced in.] It is also requisite to the legality of a custom, that it shall have been peaceable, and acquiesced in ; not subject to contention and dispute ; for as customs owe their origin to common consent, the fact of their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting. 1 *Black. Com.* 77.

Must be reasonable.] Customs must also be *reasonable*, or rather they must not be unreasonable, which is not always, as Sir Edward Coke says (*Co. Litt.* 62 a), to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account a custom may be good, though the particular reason of it cannot be assigned ; for it sufficeth, if no good reason can be assigned against it. Thus a custom in a parish that no man shall put his beasts into the common till the 3rd of October, would be good, and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom that no cattle shall be put in till the lord of the manor has first put in his, is unreasonable, and therefore bad ; for, peradventure, the lord will never put in his, and then the tenants will lose all their profits. *Co. Copyh.* s. 33.

This shows the principle upon which the reasonableness of an alleged custom is to be determined. The application of the principle to select vestries is illustrated in the case of *Golding v. Fenn*, *supra*. It was there held, that a custom by which a select vestry

should consist of an indefinite number of members, to be filled up at its own choice, without either maximum or minimum being fixed by the custom, is not unreasonable, overruling the dictum of Lord Kenyon in *Berry v. Banner*, Peake, N. P. R. 156. The court said (p. 779), there is obviously no weight in the objection, that, without a maximum being fixed, the vestry may consist of too many persons ; and although no numerical minimum be fixed by the custom, it by no means follows as a consequence that the number may be reduced to two or three, as the objection supposes : the law may consider it as part of the custom that there shall be a reasonable number, with reference to long established usage and to the population of the parish. That number which might not be too small and not unreasonable, three or four centuries ago, in a parish in which there might not be more than a dozen substantial householders, or even fewer, might not be reasonable, on a change of circumstances, when by covering fields with houses, the number might be increased more than a hundred fold.

Must be compulsory.] Customs, though established by consent, must be, when established, *compulsory*, and not left to the option of every man, whether he will use them or no. Therefore, a custom that all the inhabitants shall be rated towards the maintenance of a bridge, will be good ; but a custom that every man is to contribute thereto at his own pleasure, is idle and absurd, and indeed no custom at all. 1 *Black. Com.* 78.

Must be consistent.] Lastly, customs must be *consistent* with each other ; one custom cannot be set up in opposition to another. For if both are really customs, then both are of equal antiquity, and both established by mutual consent ; which to say of contradictory customs is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another's garden, the other cannot claim a right by custom to stop up or obstruct those windows, for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom. 1 *Black. Com.* 78.

Custom, where triable.] The legality of a select vestry may, it seems, be tried, incidentally to the principal matter of a suit, in the Ecclesiastical Courts. Thus in questions of subtraction of church-rate, the court having jurisdiction over the subject matter is bound, unless stopped by prohibition, to proceed to the trial of a select vestry by which the rate was made ; and it must be a prohibition

in the particular suit ; for if other parties before the court upon the same question have been stopped by prohibition, this will not authorise the refusal of the court to proceed with the cause. *Goodall v. Whitmore*, 2 Hagg. Ecc. R. 372. But wherever a custom is in dispute, the proper tribunal is a court of common law, and a prohibition will in all such cases be granted, if sufficient appears in proof of the alleged custom, and that the matter in dispute in the inferior court depends upon the custom. *Batt v. Watkinson*, Lutw. 1027.

Government of Select Vestries.] The ordinary rules and principles of law which relate to vestries generally are also applicable to select vestries.

A select vestry for the management of parochial affairs, existing by ancient custom, cannot elect another select vestry for the management of the poor, under the stat. 59 Geo. 3, c. 12. *R. v. Woodman*, 4 B. & Ald. 507. But where there are duties required to be performed by that Act which the ancient vestry has not been in the habit of performing, a *mandamus* will be granted to the parish officers requiring them to convene a meeting pursuant to the Act, to establish a new select vestry to perform those duties which the old vestry could not discharge, but not otherwise to interfere with it. *R. v. St. Bartholomew the Great*, 2 B. & Ad. 506 ; *R. v. St. Martin's-in-the-Fields*, 3 B. & Ad. 907.

SECTION VI.—VESTRIES UNDER 1 & 2 WILL. 4, c. 60.

A new description of vestry was introduced by the 1 & 2 Will. 4, c. 60 (commonly called *Hobhouse's Act*), which, however, applies only to such parishes as choose to adopt it, being within or part of any city or town, in which parish there shall be a greater number than eight hundred persons rated as householders and having paid the rates for the relief of the poor within the year preceding that in which the provisions of the Act may be desired to be put in execution. Sect. 43.

This Act, which was adopted in many of the metropolitan parishes, has been repealed, so far as relates to such parishes, by the 18 & 19 Vict. c. 120, *post*, Sect. vii., and its provisions have therefore become comparatively unimportant.

SECTION VII.—VESTRIES UNDER THE METROPOLIS MANAGEMENT ACT.

Extent of Act.] The 18 & 19 Vict. c. 120 (which came into operation on January 1, 1856), reciting that it is expedient that provision should be made for the better management of the metropolis, in respect of the sewerage and drainage, and the paving, cleansing and lighting and improvement thereof, makes new provisions for the electing of vestries in the parishes mentioned in the schedules, and imposes more extensive duties upon those bodies.

The interpretation clause (sect. 250) defines “the metropolis” as including the city of London, and the parishes and places enumerated in the schedules, which comprehend an area from Hampstead on the north, to Woolwich and Lewisham on the south, and from Stratford-le-Bow eastwards to Hammersmith westwards.

There is also a provision by which the Queen in Council may, upon the representation of the Metropolitan Board of Works, order that the provisions of the Act shall be extended to any parish adjoining the metropolis in which there are not less than 750 inhabitants rated to the relief of the poor. Sect. 249.

Constitution of Vestries.] The vestry in every parish mentioned in the schedule is to consist of—

18 vestrymen, where the number of rated householders does not exceed 1000;

6 additional, (*i.e.*, 24 vestrymen) where the number exceeds 1000; and

12 additional, (*i.e.*, 36 vestrymen) where the number of rated householders exceed 2000;

And so on, in the proportion of 12 additional vestrymen for every 1000 rated householders. But in no case is the number of vestrymen to exceed 120.

The incumbent and churchwardens are to constitute a part of the vestry, and to vote therein in addition to the elected vestrymen; and any district rector at the time of the Act passing constituting a part of the vestry in any parish is to continue to be so.

If the whole number of persons in a parish qualified to be vestrymen does not amount to 18, the vestry is to consist of as many as are qualified. Sect. 2.

Large Parishes divided into Wards.] Those parishes which, at the time of the Act passing, contained more than 2000 rated householders, are to be divided into wards: each ward to contain not less than 500 rated householders, and the whole number of wards in any parish not to exceed eight. Sect. 3.

A power is given, in case the relative numbers of inhabited houses in the wards of any parish are found to vary from the last census, to the Metropolitan Board of Works, upon the application of the vestry or ratepayers, to alter the number of vestrymen assigned to any ward; but so that the number assigned to each ward be divisible by 3. Sect. 5.

Vestry, when to be Elected.] Every election is to take place annually in the month of May in every year, as the vestry appoint. Sect. 7.

Notice of Election.] The churchwardens of every parish are, on some Sunday, at least twenty-one days before the day of annual election, to publish a notice in a given form, which varies according as the parish is or is not divided into wards. Sect. 13.

Where any parish is divided into wards, the churchwardens, three clear days at least before the day of election, are to appoint in writing under their hands a person to preside at the election in each of the wards, except the ward in which the churchwarden himself presides, and to notify such appointment to the vestry clerk of the parish. Sect. 14.

In parishes where there are no churchwardens, the overseers of the poor are to do the acts required to be done by the churchwardens. Sect. 25.

Notices and lists are to be published by being fixed in some public and conspicuous situation on the outside of the outer door, or outer wall near the door, of every church and public chapel in the parish or ward, including places of public worship which do not belong to the Established Church; if there be no such building, then in some public and conspicuous situation in the parish or ward. Sect. 26.

First, and subsequent Elections.] At the first election of vestrymen the full number of elective vestrymen of which the vestry is to consist are to be elected, and such vestrymen, with such other persons as before mentioned (see sect. 2, *ante*), shall forthwith be deemed to constitute the vestry of the parish. Sect. 8.

One-third of the vestrymen first elected in any parish or ward

are to go out of office in 1857; one other third in 1858; and the remaining third in 1859; and the vestry is, at some meeting before the time of election in 1857, to determine by lot which of the members first elected shall constitute the one-third to go out in 1857 and 1858. All members from time to time elected at the annual elections after the first, are to go out of office at the time appointed for the annual election in the third following year, except members elected to supply vacancies occasioned otherwise than by effluxion of time, who are to go out of office at the times when the terms of office of the members in whose places they are elected would have expired by effluxion of time. Sect. 9. Members of the vestry going out of office are, if qualified, capable of immediate re-election. Sect. 56.

At every election, except the first, for any parish or ward, the parishioners entitled to vote are to elect as many vestrymen as there are vacancies in the vestry, or among the vestrymen elected for the ward, whether such vacancies be occasioned by the expiration of the term of office, or death, or otherwise. Sect. 10.

If in the interval between any election of vestrymen and the time when the next election would take place, the number of vestrymen is reduced below two-thirds of their full number, as many vestrymen as are requisite for filling up such number are forthwith to be elected, in like manner as in the case of an annual election, and the form of notice of election is to be varied so far as is necessary. Where a parish is divided into wards, each ward is to supply the vacancies among the members elected for it. Every vestryman elected under this enactment is to go out of office at the time when the term of office of the person in whose place he is elected would have expired by effluxion of time. Sect. 20.

Qualification of Vestrymen.] The vestry is to consist of persons rated and assessed to the relief of the poor upon a rental of not less than 40*l.* per annum [in the column headed "rateable value," 19 & 20 Vict. c. 112, s. 8]; and no person is to be capable of acting or being elected as one of the vestry for any parish, unless he is the occupier of a house, lands, tenements or hereditaments in such parish, and is rated and assessed upon such rental as aforesaid within such parish. If in any parish the number of poor rate assessments at 40*l.* or upwards does not exceed one-sixth of the whole number of assessments, the amount of rental necessary to qualify a vestryman need not exceed 25*l.* The joint occupation of

premises and a joint rating in respect thereof, are sufficient to qualify each joint occupier, in case the amount of rental on which all such occupiers are jointly rated will, when divided by the number of occupiers, give for each occupier a sum not less than the amount before required. Sect. 6. The decision of the inspector of the votes as to the election of persons chosen to act as vestrymen is not final. *Goodhew v. Williams*, L. R. 3 C. P. D. 382.

Proceedings at Elections.] On the day of election the parishioners then rated to the relief of the poor in the parish, or where the parish is divided into wards, in the ward for which the election is holden, and who are desirous of voting, are to meet at the place appointed for the election and to nominate two ratepayers of the parish or ward to be inspectors of votes, and the churchwardens, or, in case of a ward election, such one of the churchwardens as is present thereat, or, if one of the churchwardens is not present, the person appointed to preside, is to nominate two other such ratepayers to be inspectors. After such nominations the said parishioners are to elect such persons duly qualified as are then proposed; and the chairman at the meeting is to declare the names of the parishioners who are elected by a majority of votes. Sect. 16.

Occupiers may claim to be rated.] By the 19 & 20 Vict. c. 112, s. 4, occupiers of tenements may claim to be rated to the relief of the poor, whether the landlord is or is not liable to be rated in respect of such tenements, and upon the occupier so claiming, by notice in writing left at the office or place of residence of the overseers or one of them, and actually paying or tendering at such office, &c., the full amount of the last rate payable in respect of such premises, the overseers are required to put his name on the rate for the time being, and, without further claim, upon every subsequent rate made during his occupation; and if the overseers neglect to do so, the occupier is nevertheless to be deemed rated for such premises from the period at which the rate for the time being, in respect of which he so claimed, was made, and thenceforth so long as he occupies the same premises. When, by composition with the landlord, a sum less than the full amount of the rate is payable, no more than that sum need be paid or tendered; and if the landlord is by any Act of Parliament liable to pay the rate, he is to continue so liable on default by the occupier having claimed as aforesaid. *Ibid.*, sect. 5.

Qualification of Voters.] No person is to be entitled to join or

vote in any such election for any parish or ward, or to be deemed a ratepayer thereof, or entitled to do any act as such under this Act, unless he have been rated [or be deemed to be rated, 18 & 19 Vict. c. 112, s. 6] in such parish to the relief of the poor for one year next before the election, and have paid all parochial rates, taxes and assessments [except church rates, 19 & 20 Vict. c. 112, s. 7] due from him at the time of so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting. 18 & 19 Vict. c. 120, s. 16.

The rate collectors, or persons appointed by them, are to attend the churchwardens and persons presiding at elections and inspectors of votes, to assist in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor in the parish or ward, and duly qualified to vote at the election. Sect. 15.

Poll may be demanded.] Any five ratepayers may then and there, in writing or otherwise, demand a poll, which is to be taken by ballot on the day next following, and to commence at 8 a.m. and close at 6 p.m., in case of an election in November, 1855, and at 8 p.m. in all other cases. Each ratepayer is to deposit in two separate sets of balloting glasses or boxes two folded papers, one containing the names of the persons for whom he votes as vestrymen, and the other the name or names of the persons for whom he votes as auditors. Each ratepayer is to have one vote and no more for vestrymen and auditors respectively. The balloting glasses or boxes are to be closed at the time fixed for closing the poll; and the inspectors are forthwith to meet and examine the votes, and if necessary, to continue the examination by adjournment from day to day, not exceeding two days (Sunday excepted), until they have decided upon the persons duly qualified, who may have been chosen to fill the offices. Sect. 18.

If an equality of votes appear to the inspectors to be given for two or more persons, they are to decide by lot upon the person to be chosen. Sect. 19.

The inspectors, immediately after they have decided upon whom the election has fallen, are to deliver to the churchwardens or one of them, or other person presiding at the election, a list of the persons chosen as vestrymen and auditors; and the said list or a copy thereof is to be published in the parish in the manner provided. Sect. 22.

Place to be provided for Elections.] The vestry are to provide such places as are requisite for holding elections under the Act, and taking the poll thereat. The expenses of providing such places, of publishing the notices, of taking the poll and of making the return at elections, are to be paid out of the poor rates of the parish by order of the vestry. Sect. 24.

Auditors of Accounts.] For every parish in the schedules there are to be elected a certain number of the ratepayers of the parish, who have signified in writing their assent to serve, to be auditors of accounts, who are to be elected at the same times and in the same manner as the vestry. The number of auditors in a parish, not divided into wards, is to be five, and in a parish divided into wards is to be the same as the number of wards, one auditor being elected in each ward. If the number of wards in a parish exceed five, the vestry are, at their first meeting after the election of auditors in any year, to elect by ballot from among such auditors five, who are to be the auditors for such parish, exclusively of any other person who may have been elected an auditor for the parish under the provisions of the Act; and a list of the five persons so elected by the vestry is forthwith to be published by the churchwardens. No person is to be eligible to fill the office of auditor who is not qualified to be a vestryman for the parish; and no person is eligible to be auditor who is a member of the vestry; and if any person is chosen both a vestryman and auditor, he is to be incapable of acting as a vestryman. Sect. 11.

The auditors elected are to go out of office at the election of vestrymen and auditors in the year next following their election. Sect. 12.

Powers and Duties of Vestry.] The persons elected as vestrymen, with the other persons mentioned in sect. 2 (*ante*, p. 183), are to constitute the vestry of the parish, and to supersede any existing vestry therein, and to exercise the powers and privileges held by such existing vestry, save as is otherwise provided; and the authority of such vestry may be pleaded in regard to all parochial property, or money due, or holdings, or contracts, or other documents of the like nature, under the control or in the keeping of such existing vestry; and all parish officers or boards are to account to them in like manner as they are by law liable to account to such existing vestry. Sect. 8.

By the 19 & 20 Vict. c. 112, s. 1, where the power of making

church rates, or rates in the nature of church rates, was at the passing of the 18 & 19 Vict. c. 120, vested in an open vestry, or in any meeting in the nature of an open vestry meeting, or any meeting of the parishioners, inhabitants or ratepayers generally, or of such of the parishioners, &c., as were rated at or above a specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power is not to be deemed to have become vested in the vestry under that Act. But this is not to affect any such rate made before the passing thereof by such last-mentioned vestry.

Nothing in this or the former Act is to affect any power of electing or appointing churchwardens or making church rates, or other power which at the time of the passing of the said Act was vested in any such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district, by whatever denomination distinguished, created for ecclesiastical purposes only. *Ibid.*, sect. 2.

Save as hereinbefore otherwise provided, all the duties, powers and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor), which might have been performed or exercised by any open or elected or other vestry, or any such meeting as aforesaid, in any parish, under any local Act or otherwise, at the time of the passing of the 18 & 19 Vict. c. 120, are to be deemed to have become transferred to and vested in the vestry constituted by that Act, except so far as any such duties, powers, or privileges are, in the case of a parish included in any district mentioned in Schedule (B), vested by sect. 90 thereof in the board of works of such district; provided that all duties and powers relating to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said Act were vested in or might be exercised by any guardians, governors, trustees or commissioners, or any body other than any open or elected or other vestry, or any such meeting as hereinbefore mentioned, are to continue vested in and to be exercised by such guardians, governors, trustees or commissioners, or other body as aforesaid. *Ibid.*, sect. 3.

The "duties, powers and privileges" mentioned in sect. 3 relate to the same matters as the "duties, powers and authorities" mentioned in sect. 90, and do not apply to a right of presentation to a church. *Carter v. Cropley*, 26 L. J. Ch. 246.

Meetings of Vestry.] All powers or duties to be performed by the vestry may be exercised and performed by the major part of such vestry, assembled at any meeting; there being not less than five vestrymen present at a meeting of a vestry which consists of not more than eighteen elected vestrymen; and not less than seven present at a vestry consisting of twenty-four elected vestrymen and no more; and not less than nine present at a vestry consisting of thirty-six elected vestrymen or upwards; and at every such meeting all questions are to be decided by the votes of the majority of the vestrymen present, and the vestry may act notwithstanding any vacancies therein. 18 & 19 Vict. c. 120, s. 28.

If the vestry room of the parish is not sufficiently large and commodious for any vestry meeting, the meeting is to be held elsewhere within the parish, but not in the church or chapel thereof. Sect. 29.

Notice of Meetings.] Every meeting of a vestry, of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting, through the post or otherwise, notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing, at the same time, notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published. 19 & 20 Vict. c. 112, s. 9.

Chairman.] At every meeting of the vestry, in the absence of the persons authorised by law or custom to take the chair, the members present are to elect a chairman for the occasion, before proceeding to other business; and the chairman, in case of an equality of votes on any question, is to have a second or casting vote. 18 & 19 Vict. c. 120, s. 30.

District Boards.] By sects. 31 to 41, provisions are made for uniting certain parishes into districts, for each of which a board of works, consisting of a specified number, is to be elected by the

vestries of the several parishes in the district; one-third of the members of the district board are to go out of office every year in the same manner as vestrymen, and the vacancies to be supplied by the election of vestrymen to be members of the district board. There are also provisions for the meetings of the board and for a quorum.

Vestries and District Boards incorporated.] The vestries of the parishes in Schedule (A) which are not included in districts, and the district boards, are to be a body corporate, and to have perpetual succession and a common seal, and to sue and be sued, and to have power to hold land, for the purposes of the Act, without licence in mortmain. Sect. 42.

Metropolitan Board of Works.] Sects. 43 to 53 relate to the constitution of a "Metropolitan Board of Works," which is to be a body corporate and to have power to hold land. This board is to be elected in certain proportions by the corporation of the City of London and by the vestries of the several parishes included in the Act; and one-third of the members are to go out by rotation in each year, and the place of any member dying, resigning or otherwise ceasing to be a member is to be supplied by the body or vestry by which he was originally elected. The board are to hold meetings and appoint a chairman with a salary.

Disqualification of Members.] Any member of the metropolitan or any district board or vestry, or any auditor, who becomes bankrupt or insolvent, or compounds with his creditors, or accepts or holds any office under the board or vestry of which he is a member, or of whose accounts he is auditor (except, in the case of an auditor of the office of auditor), or is in any manner concerned or interested in any contract or work made with or executed for such board or vestry, is to cease to be a member or auditor. But no shareholder in a joint-stock company is to be disabled from continuing or acting as a member of a board or vestry, by reason of any contract between such company and such board or vestry, or of any work executed by such company; but no such member is to vote upon any question in which such company is interested. Any person acting as a member of a board or vestry, or as auditor, after ceasing to be such member or auditor, or, being a shareholder in a joint-stock company, who votes upon any question in which the company is interested, and any person acting as a member of a vestry without being qualified, is liable to a penalty of 50*l*. All acts and proceedings of

any person ceasing to be a member or auditor, or disabled from acting, if done previously to the recovery of the penalty, are valid. Sect. 54.

Resignation and Re-election of Members.] Any member of the metropolitan or any district board, or of a vestry, may resign his office, such resignation of a member of the metropolitan board to be notified in writing, signed by the member, to the chairman of such board; and the resignation of a vestryman or member of a district board to be notified in like manner to the churchwardens of the parish for which he was elected. Sect. 55.

Any member of the metropolitan or a district board or vestry going out of office is, if qualified, capable of immediate re-election. Sect. 56.

Revoking Resolutions of Board or Vestry.] Resolutions or acts of the metropolitan or district boards, or of vestries, cannot be revoked or altered at a subsequent meeting, except it be specially convened for the purpose, and unless the revocation or alteration be determined upon by a majority consisting of two-thirds of the members of the board or vestry, if the number present at the subsequent meeting be not greater by one-fifth than the number present when the resolution was made or act done; but if the number present at the subsequent meeting be greater by one-fifth than the number present at the former meeting, the revocation or alteration may be determined upon by a mere majority. Sect. 57.

Procedure and Officers.] The metropolitan and district boards and vestries may appoint committees. Sects. 58, 59. They are required to keep minutes and books of their proceedings. Sects. 60, 61. They may appoint and remove at pleasure clerks, treasurers and officers, and allow them such salaries as they think fit; sect. 62; and may take security from such officers and servants; sect. 65; and are to provide proper offices for the purpose of transacting business. Sect. 66.

General Powers of Boards and Vestries.] It is impossible to go in detail through the various clauses of the Act, which gives very extensive powers to the vestries and district boards appointed under it, and to the Metropolitan Board of Works. Sects. 68 to 89 and 135 to 138 provide for the management of the sewers. Sects. 90 to 130 apply to paving, cleansing and lighting the streets; and sects. 131 to 134 relate to the removal and prevention of nuisances. These powers are much enlarged by 25 & 26 Vict. c. 102. 21 & 22

Vict. c. 104, extends the powers of the Metropolitan Board of Works for the purification of the Thames, and the main drainage of the metropolis.

Rates.] Every vestry and district board may by order under their seal require the overseers of their parish, or of the several parishes within their district, to pay to their treasurer, or into any bank, the sums required for defraying the expenses of the execution of the Act, distinguishing the sums connected with sewerage, and also with lighting (where land is exempted or is rated at a less rate than houses for lighting, under any Act of Parliament), from the other expenses. Sect. 158.

The overseers to whom such order is issued are to levy the amount required by making separate sewers' rates, lighting rates (where a sum is required to be levied for that purpose), and a general rate. These rates are to be levied on the persons and in respect of the property rateable to the relief of the poor, assessed on the net annual value of such property, and allowed in the same manner and subject to the same appeal as poor rates. Sect. 161.

The 162nd and four following sections make special provisions for rating particular kinds of property.

If the vestry of a parish not included in a district make the poor rate in that parish, they are to raise the expenses of executing the act as overseers were before required to do; and where parishes maintain their poor by a common rate, the orders for levying the expenses of executing the Act are to be made on the overseers authorised to levy such rate, as if such parishes were one. Sect. 167.

CHAPTER VII.

CONSTABLES.

- SECTION I. *High Constables.*
 II. *Parish Constables.*
 III. *Special Constables.*
 IV. *Constables in Boroughs and Counties.*
 V. *Constables on Canals, &c.*
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SECTION I.—HIGH CONSTABLES.

32 & 33 Vict. c. 47, declared that it was expedient to abolish the office of high constable, and enacted that after January, 1870, no high constable should be appointed unless the justices assembled at Quarter Sessions should determine it to be necessary. By that Act where any action or summary claim is preferred against any hundred or district of which there is no high constable, the chief constable of the county in which such hundred or district is situated is to do all acts which a high constable was formerly authorised or required to do.

SECTION II.—PARISH CONSTABLES.

Although parish constables are in some few instances still appointed, their duties are almost entirely performed by the county police. And it was provided by "The Parish Constables Act, 1872" (35 & 36 Vict. c. 92), that for the future no parish constable should be appointed unless the County Quarter Sessions or the vestry of any parish should determine it to be necessary, with a view to the preservation of the peace, or the proper discharge of public business. The vestry of any parish not included wholly or in part within a borough, after due notice, may at any time resolve

that one or more parish constables shall be appointed for their parish, with a salary payable out of the poor rate, and on a copy of such resolution being delivered to the justices for the petty sessional division in which the parish is situated may appoint constables for the said parish. 35 & 36 Vict. c. 92, s. 4. Two or more parishes may unite for the appointment by the justices of a constable if the vestries thereof pass separate resolutions and agree upon the proportionate parts of the salary to be paid in respect of each parish. Sect. 5.

SECTION III.—SPECIAL CONSTABLES.

Appointment.] By 1 & 2 Will. 4, c. 41, s. 1, where it is made to appear to two justices of any county or town, on oath, that any tumult, riot or felony has taken place or may be apprehended in any parish, &c., for which they act, and they think the ordinary peace officers insufficient for the protection of persons and property, they may appoint, by precept under their hands, as many householders or other persons (not legally exempt from serving the office of constable) residing in such place or in the neighbourhood, as they think fit, to act as special constables. By 5 & 6 Will. 4, c. 43, any persons willing to act may be appointed and act as special constables whether so resident or not. Such special constables are to take an oath, the form of which is given by the Act. The Secretary of State may order persons who are exempt to be sworn in. 1 & 2 Will. 4, c. 41, ss. 2, 3.

Rules.] Any two of the justices who have appointed such special constables, or a majority of the justices of the limit within which such constables have been called out, in special sessions, may make rules for the management of such constables, and may remove them for misconduct. Sect. 4.

Powers of.] Such special constables have all the powers, advantages and immunities of common constables throughout the entire jurisdiction of the justices appointing them; and the justices may order them to act in an adjoining county, if it be made to appear by the justices of such adjoining county that it is expedient that they should do so. Sects. 5, 6.

Refusal to Serve.] Any special constable convicted before two justices of refusing to take the oath, or of neglecting to appear at the proper place and time for taking it, or of neglecting to serve

when called upon, or to obey lawful orders, is liable to a penalty not exceeding 5*l.* Sects. 7, 8.

Determination of Service.] The same justices may suspend or determine the services of any or all the special constables so called out. Sect. 9. The authority of a special constable, appointed for an indefinite time, continues until determined under this section. *Reg. v. Porter*, 9 C. & P. 778.

To deliver up Staves, &c.] Every special constable, within a week after the expiration of his office, is to deliver up the staff and every other article provided for him; on conviction before two justices of omitting to do so, he is liable to a penalty not exceeding 2*l.* Sect. 10.

Expenses.] The justices, at a special session to be held for the purpose, may order reasonable allowances and expenses for special constables to be paid out of the county rate; or if in a town, &c., not contributory to the county rate, out of the fund raised in the nature of a county rate. See *Reg. v. Hulton*, 13 Q. B. 592.

Special Constables in Boroughs.] By 5 & 6 Will. 4, c. 76, s. 83, two justices having jurisdiction within any borough are, in October in every year, to appoint, by precept under their hands, as many of the inhabitants as they think fit to act as special constables, when required by the warrant of any such justices. Such warrant must recite that, in the opinion of the justice granting it, the ordinary police force is insufficient to keep the peace. Such constables are to take the oath set forth in 1 & 2 Will. 4, c. 41, and are to receive, for every day they are called on to act, 3*s.* 6*d.* from the borough fund.

Parliamentary Election.] No person having a right to vote at the election for any county, city, borough, or other place, can be compelled to serve as a special constable at or during the parliamentary election in such place. 17 & 18 Vict. c. 102, s. 8.

SECTION IV.—CONSTABLES IN BOROUGHS AND COUNTIES.

Appointment of, in Boroughs.] By the 5 & 6 Will. 4, c. 76, s. 76, the council is to appoint out of their own body a certain number of persons who, with the mayor, are to be “the Watch Committee.” This watch committee is to appoint constables, to be sworn in before a justice having jurisdiction in the borough. Such constables are to have, not only within the borough, but also within the county

in which the borough or any part thereof is situate, and in all liberties in any such county, all the powers and privileges, and to be liable to all the duties and responsibilities, which any constable, duly appointed, has within his constablewick by virtue of the common law or any statute. See *Muberly v. Titterton*, 7 M. & W. 540. A borough constable sued for an act done in the discharge of his duty beyond the limits of the borough is entitled to the protection of sect. 133 of this Act. *Mellor v. Leather*, 1 E. & B. 619.

As to the powers of borough constables outside the borough, see *post*, p. 201.

The watch committee are to make rules for the management of the constables, and they, or any two justices having jurisdiction within the borough, may suspend or dismiss any constable, and no men so dismissed can be reappointed without the consent of two such justices. Sect. 77.

Duties, &c.] Any constable on duty may apprehend persons disturbing the public peace, or whom he suspects of an intention to commit felony, and deliver them into the custody of the constable appointed under the Act, in attendance at the watchhouse; and such last-mentioned constable may take bail from persons charged with petty misdemeanours, conditioned for their appearance before a justice within two days. The constable is to enter the names, residences and occupations of the party and his sureties in his book. Sects. 78, 79.

Any constable of a borough convicted before two justices of neglect of duty, or disobedience of a lawful order, is liable to be imprisoned for not exceeding ten days, or to be fined a sum not exceeding 40s., according to the discretion of the justices. Sect. 80; and see 22 & 23 Vict. c. 32, s. 26.

Salaries, &c.] The salaries and allowances, as well as rewards for exertion, compensation for injuries or for length of service, directed by the watch committee and sanctioned by the council, are to be paid to the constables by the treasurer of the borough; the council are also to order extraordinary expenses incurred in apprehending offenders and executing orders of justices to be paid (such expenses being examined and approved by such justices). Sect. 82.

Semble, this extends to expenses incurred by borough constables in defending themselves when indicted. *Reg. v. Thompson*, 5 Q. B. 477.

As to contribution to the expenses by the treasury in boroughs

with more than 5000 inhabitants, see *post*, p. 202. 22 & 23 Vict. c. 32, and 28 & 29 Vict. c. 35, authorises the establishment of a police superannuation fund, to which one borough rate is to contribute.

Establishment of County Constabulary.] By the 19 & 20 Vict. c. 69, s. 1, in every county in which a constabulary has not been already established for the whole of such county, under the 2 & 3 Vict. c. 93, or 3 & 4 Vict. c. 88, the justices of such county, at the general or quarter sessions holden next after the first day of December, 1856, are to proceed to establish a sufficient police force for the whole of such county, or where a constabulary is already established in part of such county, then for the residue of such county, and for that purpose are to declare the number of constables they propose should be appointed, and the rates of pay which it would be expedient to pay to the chief and other constables, and to report such their proceedings to the Secretary of State; and upon the receipt from the Secretary of State of such rules as are mentioned in section 3 of the 2 & 3 Vict. c. 93, all the provisions of the said Acts are to take effect and be applicable in relation to such county, in like manner as by the said Acts provided, upon the adoption of such Acts for any county by the justices thereof, and the receipt of such rules as aforesaid from the Secretary of State, subject nevertheless to the amendments contained in this Act.

Division of Counties.] The 2 & 3 Vict. c. 93, s. 19, and 3 & 4 Vict. c. 88, s. 29, empowered the quarter sessions, instead of appointing constables for the whole county, with the approval of a Secretary of State, to appoint them for a division of the county only. But by the 19 & 20 Vict. c. 69, s. 3, where this has been done, and constables are afterwards appointed for the residue of the county, or for divisions constituting together such residue, there is to be one general county police establishment, and any divisional police establishments are to be consolidated with and form part thereof, and a chief constable is to be appointed for such county, in like manner and with the like powers as where a police force is established for the whole county in the first instance.

By 21 & 22 Vict. c. 68, detached parts of counties may for the purposes of the constabulary and the Acts relating to them be considered as forming part of county by which the same is surrounded, or with which they have the longest common boundary.

Police Districts.] By the 3 & 4 Vict. c. 88, s. 27, if the justices

are of opinion that a distinction should be made in the number of constables appointed in different parts of the county, they may divide the county into police districts, and declare the number of constables to be appointed for each, and may from time to time alter the extent of such districts and the number of constables to be appointed for each. A report of the proposed division and of the number of constables for each district, with an estimate of its extent and population, and of any other circumstances upon which the determination of the justices is grounded, is to be laid before and approved by a Secretary of State before the division is completed.

By the 19 & 20 Vict. c. 69, s. 4, the Queen in Council may, on the petition of persons contributing or liable to contribute to the police rate, order and require police districts to be formed in a county; in which case the above powers for the formation and alteration of such districts are to be exercised by the justices. Notice of such petition, and of the time when it will be taken into consideration, is to be published in the *Gazette* one month at least before it is considered.

Transferred Districts.] The justices of two or more neighbouring counties, in their several quarter sessions, may agree that parts of their several counties shall, for the purposes of the recited Act, be considered as forming part of any other of the said counties; and a district so transferred is to be considered detached from the county to which it belongs, and wholly surrounded by the county to which it is transferred; and all the provisions contained in this Act, or the 2 & 3 Vict. c. 82, respecting detached parts of counties, are to apply to such transferred districts. 3 & 4 Vict. c. 88, s. 2.

Consolidation of County and Borough Police.] The county justices and the council of any incorporated borough may agree for the consolidation of the county and borough police, in which case the constables on both establishments are to have all the powers, throughout the county and borough, which county constables have under 2 & 3 Vict. c. 93; and the provisions of which are to apply to borough as well as to county constables. In case of such consolidation the government of the consolidated police is to be in the chief constable of the county. 3 & 4 Vict. c. 88, ss. 14, 15.

If application has been made by a town council to the justices of the county to consolidate the police, as above provided, and such consolidation has not been effected, the Queen in Council, upon the report of a Secretary of State, may order the consolidation to be

made, as if it had been effected by agreement under the former Act, save so far as relates to the determination of such agreement; and the Queen in Council may at any time vary the terms of such consolidation, or determine it upon such terms as seem just. 19 & 20 Vict. c. 69, s. 5.

No agreement for consolidation made under the 3 & 4 Vict. c. 88, s. 14, is to be put an end to without the sanction of a Secretary of State. 19 & 20 Vict. c. 69, s. 20.

Appointment of Chief Constable.] The justices in quarter sessions are to appoint a chief constable, subject to the approval of the Secretary of State, and in the same manner to appoint another in case of vacancy. He is to hold his office until dismissed by the justices. The same chief constable may be appointed for two adjoining counties or parts of counties. 2 & 3 Vict. c. 93, s. 4.

The chief constable may, in case of illness, subject to the approval of the justices in sessions, appoint one of the superintendents as his deputy; but no such deputy can act with the powers of chief constable for more than three months after a vacancy. Sect. 7.

Duties, &c., of Chief Constable.] The chief constable is to attend quarter sessions, and make quarterly reports to the justices. The superintendents are to attend the sessions of their respective divisions, and to report in like manner. Sect. 17. The extraordinary expenses incurred by the chief constable and the constables under his orders are to be allowed to him, and to be audited by the justices in sessions. Sect. 18; see *Reg. v. Chelmsford*, 5 Q. B. 66.

Appointment of Constables and Superintendents.] The chief constable, subject to the approval of two or more justices in petty sessions, is to appoint the other constables, and a superintendent for each division, and may dismiss them at pleasure; he also has the general government of all of them, subject to the lawful order of the justices in quarter sessions. Sect. 6.

Powers of.] The chief constable and other constables are to be sworn before a justice, and to have all the powers, throughout the county and in all liberties, &c., and also in any adjoining county, which any constable has within his constablewick by virtue of the common law or any statute [and, in every borough in the county and in the county, the powers, &c., of borough constables. 18 & 19 Vict. c. 69, s. 6]. The 1 & 2 Will. 4, c. 41, is to apply to them, except as to the manner of their appointment and the other special provisions of this Act. Sect. 8.

The constables of a county are to have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges, and are to be liable to all such duties and responsibilities, as the constables appointed for such borough have and are liable to within any such county, and are to obey all such lawful commands as they may from time to time receive from any of the justices having jurisdiction within any such borough in which they are called on to act as constables, for conducting themselves in the execution of their office. 19 & 20 Vict. c. 69, s. 6.

No county constable shall be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by order of his chief constable or superintendent; and no constable of any borough having a separate police establishment shall be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee in case of special emergency. 22 & 23 Vict. c. 32, s. 2.

The constables acting under the 5 & 6 Will. 4, c. 76, or 19 & 20 Vict. c. 69, s. 6, are, in addition to their ordinary duties, to perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions or the watch committees of such respective counties or boroughs from time to time direct and require. *Ibid.*, sect. 7.

Expenses—Police Rate.] The expenses of the force (which, by the 2 & 3 Vict. c. 93, were paid out of the county rate) are to be paid out of a police rate to be made by the justices in quarter sessions, and to be levied with the county rate; the value of rateable property is to be computed according to the last valuation for the county rate. 3 & 4 Vict. c. 88, ss. 3, 4.

If police districts are formed, the expenses of the force are to be divided into general and local expenditure, the former of which is to be defrayed in common by all the districts, and the latter, consisting of the salaries and clothing of the constables appointed for the district, and such other expenses as the justices, with the approval of the Secretary of State, direct to be included, is to be defrayed by each district separately, and the police rates are to be assessed and levied in each district separately. 3 & 4 Vict. c. 88, s. 28.

Contribution by Treasury.] Upon the certificate of a Secretary

of State that the police of any county or borough has been maintained in a state of efficiency, in point of numbers and discipline, for the year ending on the twenty-ninth of September then last past, the Commissioners of the Treasury may pay, out of the moneys provided by Parliament for the purpose, a sum towards the expenses of such police for the year mentioned in such certificate; but such payment shall not extend to any additional constables appointed under the 3 & 4 Vict. c. 88, s. 19, *post*, p. 203. Before any such certificate is finally withheld in respect of the police of any county or borough, the report of the inspector, relating to the police of such county or borough, is to be sent to the justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, is to be laid before Parliament. 19 & 20 Vict. c. 69, s. 16.

But no such sum as aforesaid is to be paid towards the pay and clothing of the police of any borough (not being consolidated with the police of a county), the population of which, according to the last Parliamentary enumeration for the time being, does not exceed five thousand. *Ibid.*, sect. 17.

Sect. 19 of 19 & 20 Vict. c. 69, s. 16, limited the amount authorised to be contributed by the Commissioners of Her Majesty's Treasury, out of moneys provided by Parliament towards the expenses of any police force in Great Britain, to one-fourth of the charge for their pay and clothing, but that amount is repealed by 38 & 39 Vict. c. 48, s. 2, during the continuance of that Act.

Fees.] It shall not be lawful for any constable acting under any of these Acts to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this is not to prevent the receipt by any such constable of any fee or other payment legally payable, which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to or applied in aid of any police superannuation fund established or to be established in any borough, under the provisions of the 11 & 12 Vict. c. 14, or of any local or other Act. 19 & 20 Vict. c. 69, s. 8.

Other Provisions.] The 2 & 3 Vict. c. 93, contains further provisions disqualifying constables from voting or interfering at elections of members of Parliament; sect. 9 (see 19 & 20 Vict. c. 69, s. 9, as to municipal elections); or from exercising any other employment, and exempting them from serving in the militia. Sect. 10. Penalties are also imposed on constables neglecting their duty; sect. 12; resigning without leave; sect. 13; not delivering up accoutrements, &c.; sect. 14; and on others who have in their possession such accoutrements, &c.; or personate constables for an unlawful purpose; sect. 15; or who harbour constables during the hours of duty. Sect. 16.

The 3 & 4 Vict. c. 88, provides for the appointment of additional constables at the cost of individuals; sect. 19; for the alteration of the number of superintendents by the justices; sect. 26; for providing a superannuation fund; sects. 10, 11 (extended by 19 & 20 Vict. c. 69, ss. 10–13); for providing station-houses and strong rooms for the confinement of persons in custody. Sect. 12. (See 19 & 20 Vict. c. 69, ss. 22, 23.)

The 19 & 20 Vict. c. 69, s. 15, provides for the appointment of three inspectors of police by the Crown; and, by sect. 14, for an annual statement of crime to be furnished by the justices of counties and the watch committees of boroughs to the Secretary of State.

Extent of Acts.] The word “county” means any division in which there is a separate Court of Quarter Sessions, or in which separate county rates are made; 2 & 3 Vict. c. 93, s. 28; but it is not to include any liberty or franchise having a distinct commission of the peace, separate from the commission of the peace of the county or riding in which it is situated. 3 & 4 Vict. c. 88, s. 34.

By the 19 & 20 Vict. c. 69, s. 30, the word “county” is in that Act to have the same meaning as in the 3 & 4 Vict. c. 88; and the word “borough” is to mean any city, borough or place incorporated under the 5 & 6 Will. 4, c. 76, or which has otherwise become subject to that Act.

SECTION V.—CONSTABLES ON CANALS, &c.

Appointment of.] For the purpose of preventing robberies and other outrages on canals and navigable rivers, the 3 & 4 Vict. c. 50, s. 1, enables two justices and the watch committee of any borough, within their respective jurisdictions, on the application of the com-

mittee or board of directors of any canal or navigable river, to appoint persons to act as constables on and along such canal or river. Such constables are to take an oath before a justice, and to have power to act as constables on such canal or river and on and within lands and premises belonging to such company, and in all places not more than a quarter of a mile from either bank of such canal or river, and to have all powers, &c., which any constable duly appointed has within his constablewick. But no such constable is to act within the metropolitan police district or the city of London, or in any places beyond the banks, towing-paths and premises belonging to such company as are situated within any city or incorporated borough. Sect. 1.

CHAPTER VIII.

JURY LISTS.

It is not within the scope and object of this work to state more of the law respecting juries than relates to the duties to be performed by certain parish and other local officers, in preparing and returning the lists from which juries are ultimately to be summoned.

Warrants of Clerk of Peace.] The clerks of the peace of every county are, on or before the 20th day of July in every year, to issue their precepts to the churchwardens and overseers, requiring them to prepare, before the 1st of September, lists of all men residing within their parishes and townships liable to serve on juries. 25 & 26 Vict. c. 107, s. 4.

A form of precept is given in the Schedule to 25 & 26 Vict. c. 107, and a form of return in the Schedule to 6 Geo. 4, c. 50.

Extra-parochial Places.] The justices of any division, at a special petty sessions to be holden for that purpose before the 1st of July in any year, may make an order for annexing any extra-parochial place to any parish or township adjoining thereto, for the purposes of the Jury Acts, and are to cause a copy thereof to be served on the churchwardens and overseers of such parish or township; and such extra-parochial place is thenceforth to be deemed, for all the purposes of the Act, to be an integral part of such parish or township. 6 Geo. 4, c. 50, s. 7.

As to summoning jurors within franchises and liberties, see *R. v. Jaram*, 4 B. & C. 692.

Lists, by whom made.] The churchwardens and overseers, upon receiving the precept, are required to make out a list of all men liable to serve on juries, residing in the parish or township (and the extra-parochial place thereto annexed, sect. 7), with their Christian and surnames, and their true places of abode, title, &c.,

or business, according to the form set forth in the schedule. Sect. 8.

In making out such lists the overseers shall specify which of such persons are, in the judgment of such overseers, qualified as special jurors, and shall also specify in every case the nature of the qualification and also the occupation and the amount of the rating or assessment of every such person. 33 & 34 Vict. c. 77, s. 11.

If any overseer, without reasonable excuse, to be allowed by the justices having cognisance of the case, insert in the list of persons qualified to serve as jurors prepared by him the name of any person whose name ought not to have been inserted therein, or omit therefrom the name of any person whose name ought not to have been omitted, he shall, on summary conviction, be liable to a penalty for each offence not exceeding 40s. *Ibid.*, sect. 13.

Upon completing the revision of the jury lists the justices at petty sessions are to certify in writing that they have examined such lists, and that the same are true and proper lists of the special and common jurors. *Ibid.*, sect. 14.

Publication of Lists.] The churchwardens and overseers are, on the three first Sundays in September, to fix a copy of the list upon the principal door of every public place of religious worship within their parishes or townships, with a notice stating when and where objections to the list will be heard by the justices. They are to keep the original list, or a copy, to be perused by any inhabitant at any reasonable time during the three first weeks of September, without fee, that improper omissions or insertions may be corrected; and they may cause a sufficient number of copies of the lists to be printed for these purposes at the expense of their parishes or townships. 6 Geo. 4, c. 50, s. 9.

Sessions for correcting Lists, &c.] The justices in every division are to hold a special petty sessions, within the last seven days of September in every year, of which notice is to be given before the 20th of August preceding to the churchwardens and overseers, at which the churchwardens, &c., are to produce the lists of men liable to serve on juries within their parishes or townships, and to answer upon oath such questions respecting the same as are put to them by the justices. The justices may strike out the names of persons exempt, and insert the name of any man omitted, and reform any errors or omissions in respect to names, qualifications, &c., upon the application of, or notice to, the parties immediately

interested. The justices present, or two of them, are to sign the lists with their allowance. *Ibid.*, sect. 10.

Upon completing the revision of the jury lists, the justices are to certify in writing that they have examined such lists and that the same are, to the best of their knowledge and belief, true and proper lists ; and their decision as to the qualifications of persons marked as special jurors shall be final. 33 & 34 Vict. c. 77, s. 14.

Inspection of Tax-books.] The churchwardens, &c., upon request made, at a reasonable time between the 1st of July and the 1st of October in every year, to any officer having the custody of any duplicate or tax-assessment for such parish or township, are to have liberty to inspect the same, and make extracts ; and every Court of petty sessions and justice is, upon the like request, to have the like liberty to inspect the same. 6 Geo. 4, c. 50, s. 11.

Any churchwarden or overseer offending against Jury Acts, by neglect of duty or otherwise, may be fined not more than 10*l.* nor less than 40*s.*, at the discretion of the justice before whom he is convicted. 6 Geo. 4, c. 50, ss. 44, 45.

Regulations.] 33 & 34 Vict. c. 77, s. 19, enacts that no person shall be summoned to serve on any jury or inquest (except a grand jury) more than once in any one year, unless all the jurors upon the list shall have been already summoned to serve during such year ; that no person is exempted from serving as a common juror by reason of his being on any special juror's list, or being qualified to serve as a grand juror ; and that no person shall be summoned or liable to serve as a juror in more than one court on the same day.

In Boroughs.] In boroughs under 5 & 6 Will. 4, c. 76, having separate quarter sessions, seven days at least before holding the sessions, the clerk of the peace is to cause to be summoned a sufficient number of persons duly qualified (*i.e.*, burgesses) to serve as grand jurors, and not less than thirty-six nor more than sixty persons so qualified to serve as petty jurors, and he is to make out a list of the grand jurors, and a panel of the petty jurors, containing their names, places of abode, and descriptions. Sect. 121.

As to the qualification of special jurors, and persons exempt from serving on juries at all, see 33 & 34 Vict. c. 77.

CHAPTER IX.

HIGHWAYS.

- SECTION
- I. *Highways at Common Law.*
 - II. *Highway Acts.*
 - III. *Parochial Authorities under Highway Act, 1835.*
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 - 1. *Highway Districts.*
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SECTION I.—HIGHWAYS AT COMMON LAW.

Nature of Highways.] There are three kinds of ways: first, a foot-way for man alone to pass along, called in Latin *iter*; secondly, a foot and horse-way, *actus* (*ab agendo*), commonly called a pack and prime way; and thirdly, *via* or *aditus*, a road for carriages, horses and men, which includes both the former; this last being twofold, viz., *regia via*, the king's highway for all men, &c.; and *communis strata*, belonging to a city, or town, or private persons. *Co. Lit.* 56 a.

In legal acceptation, a way comprehends no more than the mere surface upon which it passes, and includes neither the fences on either side—*R. v. Commissioners of Landillo*, 2 T. R. 232—nor the minerals or earth under it. *Roll. Abr.* 392. The freehold of the highway is in the owner of the soil. *Lude v. Sheppard*, 2 Stra. 1044. The law will presume that waste land adjoining a road and the road itself *usque ad medium filum vie* belong to the owner of the soil of the adjoining enclosed land, whether he be freeholder, copyholder or leaseholder, and not to the lord of the manor, but this presumption will be rebutted by acts of ownership or other evidence of property. *Steel v. Prickett*, 2 Stark. 468; *Doe v. Pearsey*, 7 B. & C. 304. And as to the evidence, see *Doe v. Kemp*, 7 Bing. 332. This presumption is much weakened, if not destroyed, if the strip by the side of the highway communicate with open commons; *Grose v. West*, 7 Taunt. 39; nor does it apply to roads set out under an Enclosure Act. *R. v. Wright*, 3 B. & Ad. 681; *R. v. Edmonton*, 1 M. & Rob. 32. Where the strip was claimed as part of the adjacent glebe, the enclosure of other portions of it against the rector was admitted as evidence to rebut the presumption of ownership. *Doe v. Hampson*, 4 Com. B. 267. Where each of two lessees of the lord of the manor claims a strip as part of the land demised to him, there is no presumption in favour of him whose land it adjoins. *White v. Hill*, 6 Q. B. 487. A common street is a public king's highway; *Woodyer v. Hadden*, 5 Taunt. 125; though *communis strata* and *alta regia via* were formerly attempted to be distinguished from each other. *R. v. Hammond*, 1 Str. 44; 10 Mod. 382. A navigable river is also a highway, *S. C.* A railway made under an Act of Parliament is a highway. *R. v. Severn and Wye Rail. Co.*, 2 B. & Ald. 646. See also 8 Vict. c. 20, s. 92. So a towing path, though only used for that purpose. *S. C.*; see also as to canals, *R. v. Trafford*, 1 B. & Ad. 874. A highway may be created by Act of Parliament. *Sutcliffe v. Greenwood*, 8 Price, 535. And a turnpike road, made under an Act to be in force for twenty-one years, and open to the public only on payment of tolls, is still a highway. *Reg. v. Lordsmere*, 15 Q. B. 689. Any roads which are common to all Her Majesty's subjects, though leading merely from a hamlet, may be properly termed highways. *R. v. Harrow*, 4 Burr. 2090.

It has been made a question whether there can be a public highway which is not a *thoroughfare*. See *Trustees of Rugby Charity*

v. Merryweather, 11 East, 376, n.; *Woodyer v. Hadden*, 5 Taunt. 125; *Wood v. Veal*, 5 B. & Ald. 454. However, it has been decided that there is no reason, in point of law, why a place which is not a thoroughfare should not be a highway, if there has been such an user of it by the public as will raise the inference of a dedication. But the fact of a way being a *cul de sac* would be an argument against such an inference. *Bateman v. Bluck*, 21 L. J. Q. B. 406. A passage from one part of a public street to another, made originally for private convenience, may become an highway by an uninterrupted user by the public. *R. v. Lloyd*, 1 Campb. 260. A public way must lead between two public places. *Campbell v. Lang*, 1 Macq. H. L. Cas. 451; *Young v. Cuthbertson*, *Ibid.* 455.

A way ceases to be a "public highway" where the access to it at either end has become impossible by reason of ways leading to it having been legally stopped up. *Bailey v. Jamieson*, L. R. 1 C. D. 239.

Dedication.] A highway must be dedicated to the public by the owner of the soil; that is, he must have done some act or conducted himself in some manner, showing an intention to give the public an irrevocable licence to travel along it, at their free will and pleasure. *Poole v. Huskinson*, 11 M. & W. 827; *Surrey Canal Company v. Hall*, 1 M. & Gr. 392. Uninterrupted user by the public for a number of years is, therefore, evidence from which a dedication may and ought to be presumed. *Reg. v. East Mark*, 11 Q. B. 877; *Reg. v. Petrie*, 4 E. & B. 737. So, where a man builds a street on his own land, and it is used by the public as a highway, and no bar or other impediment is erected thereon by him, a dedication to the public will be presumed. *Lade v. Sheppard*, 2 Str. 1004; *R. v. Lloyd*, 1 Camp. 260. But if a bar, rail or gate, however slight, be kept across it, although the public be permitted in general to pass, the presumption of dedication will be rebutted; *Woodyer v. Hadden*, 5 Taunt. 125; and a single act of interruption will outweigh the effect of several acts of user. *Poole v. Huskinson*, 11 M. & W. 827; *Trustees of British Museum v. Finnis*, 5 C. & P. 46.

If the bar, &c., erected at first be afterwards knocked down, and not replaced, still the presumption is rebutted, for a dedication must be made openly, and with a deliberate purpose. *Roberts v. Karr*, 1 Camp. 262, n. A permissive user may always be consistent with a right to resume the way; the intention of the proprietor being taken into consideration. *Barraclough v. Johnson*, 8 A. & E. 99.

An unfinished street, leading from an old public street to a new road across fields, had been used for five or six years, one-half only being lighted, the other half being neither lighted nor paved, but the inhabitants had paid the highway and paving rates; it was held, that there was evidence of a dedication to the public. *Jarvis v. Dean*, 3 Bing. 447. Repairs done upon a road by the parish in which it is situated are evidence of its being an highway. *R. v. Leake*, 5 B. & Ad. 469. The dedication of a highway can be presumed in favour of the public only, not of any specific body. *Bermondsey v. Brown*, L. R. 1 Eq. 204; 13 L. T. 574.

Dedication, by whom made.] In general, the dedication must be by the owner of the fee; and a leaseholder, however long his term, or a person having only a limited estate, cannot devote any portion of the land to a highway, so as to bind the reversioner. *Wood v. Veal*, 5 B. & Ald. 454. But where an user by the public is proved, it is evidence of a dedication by the owner of the fee, whoever he may be, and it is not necessary, in support of the presumption, to show who the particular owner is. *Reg. v. East Mark*, 11 Q. B. 877; *Reg. v. Petrie*, 4 El. & B. 737. If the existence of a term or other limited estate be shown, yet a continuance of the user after its determination is evidence that the owner of the fee assented to it, if it was with his knowledge. *Harper v. Charlesworth*, 4 B. & C. 574. Where a way had been used for a great number of years over a close in the hands of a succession of tenants, one of whom frequently complained thereof to the landlord's steward, but no action was brought against any trespasser, a dedication by the landlord was presumed, although he was never in the actual possession himself, nor was proved to have been near the spot. *R. v. Barr*, 4 Camp. 16. Trustees in whom lands are vested by statute for special purposes inconsistent with the public having a right of way over them cannot dedicate such land, and no user will in such case raise a presumption of dedication. *R. v. Leake*, 5 B. & Ad. 478.

Partial Dedication.] It has not yet been expressly decided how far there may be a *partial* dedication of a highway to the public. In *Marquis of Stafford v. Coyney*, 7 B. & C. 257, Bayley, J., and Holroyd, J., said they saw no objection in principle to such a dedication, and were disposed to think it might be made, though Littledale, J., entertained some doubt on the subject. It was there decided, that where a landowner suffered the public, for several

years, to use a road through his estate for all purposes except that of carrying coals, this was either a limited dedication, or no dedication at all, but only a licence revocable ; and that a person carrying coals along the road, after notice not to do so, was a trespasser ; and supposing it to amount to a partial dedication, whether legal or not, it was further observed that, at all events, the right given cannot be more extensive than the gift imports. There may be a dedication for a limited *purpose*, as for a foot-way, horse-way, or drift-way ; but there cannot be a dedication to a limited *part of the public*, as a particular parish. And such a partial dedication is simply void, and operates as no dedication at all. *Poole v. Huskinson*, 11 M. & W. 827.

The dedicating a way to the public communicates no more than the right of passage ; the original owner retains his interest in the soil, with all trees that grow upon it and mines which may be opened beneath it ; 2 *Inst.* 705 ; and trespass may be maintained by such an owner, for damaging the soil of the highway. 1 *Burr.* 143 ; *Lude v. Shepherd*, 2 Str. 1004.

Turnpike Roads.] The greatest portion of the highways throughout the kingdom were, until recently, turnpike roads, from their having been either originally formed or subsequently regulated by Acts of Parliament, which provided the means of keeping them in repair by the tolls which were taken at the turnpikes erected upon them for the purpose. Such roads are now in course of abolition ; the highway authorities having power to pay off the debts on turnpikes, and take upon themselves the maintenance of such roads. 35 & 36 Vict. c. 85.

SECTION II.—HIGHWAY ACTS.

Every parish is bound to maintain the highways which pass through it in good repair, and for this purpose surveyors of highways, or, as they were anciently called, waywardens, were formerly elected by the parishioners, and held office for one year. Subsequently, in 1835, highway boards were established, and in 1862 highway districts formed ; but by an Act passed in 1878, such highway districts may be made coincident in area with the rural sanitary district ; the waywardens may be discharged, and a district surveyor of highways appointed in their stead, whilst the functions of the highway board are to be performed by the rural sanitary

authorities. This Act, however, is not compulsory in its application, and the county authorities may, if they think fit, refuse to allow its provisions to be enforced, and in such case the highway board will retain its powers.

5 & 6 Will. 4, c. 50 ; 25 & 26 Vict. c. 61 ; 27 & 28 Vict. c. 101 ; and 41 & 42 Vict. c. 77, are the Acts now in force relating to parish highways.

These Acts make various provisions for the superintendence and management of highways, which will be considered in the following sections.

SECTION III.—PAROCHIAL AUTHORITIES UNDER HIGHWAY ACT, 1835.

Parish Surveyor—Election of.] By 5 & 6 Will. 4, c. 50, s. 6, the inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers, are to proceed to the election of one or more persons to serve the office of surveyor in the said parish, for the year then next ensuing. An outgoing surveyor is to continue to act until his successor shall be appointed, and is to be re-eligible, and if re-elected, he is to continue to act and to remain in office ; and notice of such election shall be given by the chairman to the person elected and to the outgoing surveyor. In any parish where there is no meeting in the year for the nomination of overseers, the inhabitants are to meet within fourteen days next after the 25th day of March, to elect a surveyor for the parish.

Where at a vestry meeting, under this section, a poll was refused, the Court compelled the inhabitants by *mandamus* to re-assemble and proceed to a poll. *Ex parte Grossmith*, 10 L. J. Q. B. 359 ; *Reg. v. St. Pancras Vestrymen*, 11 A. & E. 15 ; *Reg. v. D'Oyley*, 12 A. & E. 139. A person rateable, though not rated to the last highway rate, is entitled to vote at the election of surveyor. *R. v. Kershaw*, 26 L. J. M. C. 19 ; 28 L. T. 101. Where several are appointed they are each of them surveyor. *Morrell v. Martin*, 3 M. & Gr. 581. If a township is bound to repair its own highways separately from the rest of the parish, it ought to appoint a separate surveyor. *R. v. King's Newton*, 1 B. & Ad. 826.

Qualification.] By sect. 7, any person living within the parish, and

having an estate within the parish, in his own right or in right of his wife, of the value of 10*l.* a-year, or a personal estate of the value of 10*l.*, or being an occupier, of the yearly value of 20*l.*, is eligible to be elected a parish surveyor, and may provide a deputy, to be approved of by the justices at a special sessions for the highways, who are by writing under their hands to testify their consent thereto.

Refusal to serve.] By sect. 8, any person so elected, and not exempt, who refuses or neglects to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of as aforesaid, is to forfeit, on conviction before any two justices, any sum not exceeding 20*l.*, unless he can show good and sufficient cause why he should not be called upon to serve. Every deputy has the same powers, and is liable to the same penalties.

Paid Surveyor.] By sect. 9, instead of electing a surveyor as before mentioned, the majority of the inhabitants so assembled in any parish for the election of surveyors may nominate and elect any one person of skill and experience to serve the office of surveyor of such parish, and may fix such salary for the execution of the office as they think fit, and such surveyor is subject to the same duties and penalties. This will not apply to a parish within a highway district. 25 & 26 Vict. c. 61, s. 42.

Appointment by Justices.] In case the inhabitants have neglected to elect a surveyor or surveyors, or the outgoing surveyor has delivered no statement of the name of his successor, or has neglected to act, such justices are required to dismiss such surveyor, and to appoint any person till the annual meeting then next ensuing for the election of surveyors. 5 & 6 Will. 4, c. 50, s. 11.

When a parish is situated in more than one county, division or liberty, the surveyor is to be appointed by the justices at a special sessions for the highways assembled in that county, division or liberty in which the church of the parish is situate. Sect. 12.

Parish not maintaining Highways.] The inhabitants of any parish or place, notwithstanding they are not liable to maintain any highway, or, on their neglect, the justices, may exercise all the powers with respect to the appointment of a surveyor for such place, and any surveyor so appointed will have all the powers and duties of a surveyor under the Highway Acts. 41 & 42 Vict. c. 77, s. 25.

United Parochial District.] Any parish vestry may make

application to the justices for being united with one or more parishes to form a district, and nominate one district surveyor, with the salary the vestry shall agree to pay such surveyor. 5 & 6 Will. 4, c. 50, s. 13.

And on such application the justices are authorised to unite the parishes so applying into a district, and appoint one surveyor for such district. Sect. 14.

And such parishes will continue to form a district for three years, and until one vestry give a year's notice of the intention to cease to form part of the district, when the appointment of the district surveyor will cease. Sect. 15.

Such district surveyor will have the same powers and duties, &c., as any elected surveyor, but cannot expend money except for the benefit of the parish in which it is levied, unless with consent, for the common benefit of the united parishes; and such district surveyor will be paid an agreed salary by the surveyors of highways. Sect. 16.

The inhabitants in vestry assembled are the inhabitants of the place or district in which the highway is situated. *Wright v. Frant*, 32 L. J. M. C. 204. As to sufficiency of notice of meeting, see *R. v. Powell*, L. R. 8 Q. B. 403. Widening an existing highway is a diversion of an old and a substitution of a new highway within this section. *R. v. Phillips*, L. R. 1 Q. B. 660.

Highway Board.] In any parish where the population exceeds 5000, a majority of two-thirds of the vestry may form a board for the superintendence of the highways, and elect not exceeding twenty nor less than five householders surveyors of the highways; and such persons, or any three of them, are authorised to act as "The Board for Repair of the Highways in the Parish of _____," and to appoint a collector of the rates, and employ an assistant surveyor, and a clerk to attend the board, and to keep the accounts and minutes of the proceedings. Such assistant surveyor and clerk are to be paid such reasonable salaries out of the rates as the board determine; and may appoint a treasurer. And on the day for the election of surveyors the board are to present to the vestry copies of all their accounts and of the minutes of their proceedings during the preceding year. Sect. 18.

Such board may rent, or, with the consent of the vestry of the parish, purchase, ground for the keeping of the implements and materials necessary for the reparation of the highways, or for the

preparing the materials for the same respectively, and may direct how the highways shall be paved. Sect. 19.

Collector—Appointment of.] The surveyor, the consent of the vestry being first obtained, may appoint collectors of the rates, and make such allowance to such collector, out of the moneys to be received under the Act, as the vestry think reasonable. The collector is to have all the same powers, remedies, and privileges, for the levying and enforcing payment of rates, as the surveyor. 5 & 6 Will. 4, c. 50, s. 36.

To give Security.] The surveyor is required to take security from every collector for the due execution of his office, such security to be to the full amount of the sum likely to be in his hands as collector at any one time, and to be by bond without stamp. Sect. 37.

To Account to Surveyor, &c.] Every collector must deliver to the surveyor accounts of all moneys received, also the names of persons having neglected to pay their rates. Sect. 38.

Duties of Surveyor.] See *post*, REPAIR OF HIGHWAYS. The surveyor of every parish must, with consent of the vestry, or direction of the justices, fix where two or more ways meet a stone or post, with inscriptions in legible letters, not less than one inch in height, containing the name of the next market town, village, or place to which the highways lead, as well as to mark the boundaries of the highway, containing the name of the parish; and the surveyor must, at the approaches to such parts of any highways as are subject to dangerous floods, cause to be erected stones or posts for guiding travellers through the floods, and also to secure horse and foot causeways from being passed over by carriages. 5 & 6 Will. 4, c. 50, s. 24.

The surveyor must remove snow, &c., from highways. Sect. 26. And he must make rates. See *post*, HIGHWAY RATE.

The surveyor must keep accounts of the moneys levied for the highway rate, and keep a particular account of all money coming to his hands, and for what work he has applied the same, and also of all tools, materials, &c., for the highways, such book to be open to inspection. Sects. 39, 40.

All the books, materials, &c., provided for the highways, also the scrapings, will be vested in the surveyor, who must, within fourteen days after leaving his office, deliver such accounts, together with all money due, and all tools, materials, &c., to his successor

in office ; and in case he neglect to deliver such he will forfeit a sum not exceeding 5*l.*, and in case he make default in accounting double the money due. Sects. 41, 42. In case of the death of any surveyor before he has paid the moneys received, his executors or administrators must pay the same, and deliver up all books, tools, &c., &c., and in case of non-payment or delivery, the succeeding surveyor may recover by action. Sect. 43.

Where a turnpike surveyor had omitted liabilities for previous years in his accounts, it was held that he could not recover any such except for the last year. *Care v. Mills*, 31 L. J. Ex. 242.

The accounts of the highway authority of every highway parish are to be made up in such form as the Local Government Board shall prescribe, and be balanced to the 25th of March, and as soon as conveniently may be after such date shall be audited by the auditor of accounts relating to the relief of the poor for the audit district in which the highway parish, or the greater part thereof in rateable value, is situate. The expense of such audit is to be defrayed out of the highway rate. 41 & 42 Vict. c. 77, s. 9.

Every highway authority has to keep a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and forward such account to the county authority to be audited. Sect. 18.

It is the duty of the surveyor to make a yearly return of the receipts and expenditure as regards highways to the Local Government Board. 42 & 43 Vict. c. 39, s. 2.

The board may dispense with such return where a financial statement of such receipts and expenditure has been delivered to the auditor. *Id.*

If any surveyor or district surveyor or assistant surveyor neglects his duty in anything required of him for which no particular penalty is imposed, he is to forfeit for every such offence any sum not exceeding five pounds. 5 & 6 Will. 4, c. 50, s. 20. If the surveyor has any part, share or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided for or on account of any highway, &c., under his care, or uses or lets any team, or uses, sells or disposes of any materials to be used in making or repairing such highway, &c. (except by the licence of two justices in special sessions), he is to forfeit a sum not exceeding 10*l.*, and to be for ever incapable of being employed as a surveyor with a salary under the Act. Sect. 46. That section

does not apply to the highway board of any highway district, or to any parish within any highway district. 27 & 28 Vict. c. 101, s. 20.

Special Sessions for Highways.] The justices are to hold not less than eight nor more than twelve special sessions in every year for highway purposes, to be appointed at a special sessions to be held within fourteen days after the 20th day of March.

SECTION IV.—DISTRICT AUTHORITIES UNDER HIGHWAY ACTS, 1862, 1864, & 1878.

1. *Highway Districts.*

Five justices of a county may require the clerk of the peace to send notice that at the Court of Quarter Sessions therein mentioned a proposal will be made to constitute some part of the county a highway district, and also require the clerk of the peace to send notices to the churchwardens or overseers of every parish mentioned therein ; and the justices at the court mentioned may make a provisional order constituting part of their county a highway district, but such order will not be of any validity unless confirmed by a final order at some subsequent court. 25 & 26 Vict. c. 61, s. 5. And not less than two out of the five justices making such proposal must be resident in the said district or acting in the petty sessional division in which some part thereof is situate. 27 & 28 Vict. c. 101, s. 6.

In forming highway districts, or in altering the boundaries of districts, the county authority are to have regard to the boundaries of rural sanitary districts, and form highway districts so as to be coincident with rural sanitary districts. 41 & 42 Vict. c. 77, s. 3. As to the county authority exercising the powers of a highway board in such districts, see sect. 4.

The justices making a provisional order are to appoint some subsequent court within six months for its confirmation by a final order ; and the clerk of the peace must send notice of the appointment so made in relation to the confirmation. The justices at the appointed court may quash the provisional order, or confirm it with variations, or respite its consideration to some subsequent court ; but where the variations made alter the parishes constituting a highway district, the order will be provisional only. 25 & 26

Vict. c. 61, s. 6. That section also declares what the order must state, and that notice of the provisional and final orders must be published in certain newspapers. Justices who have taken part in prior proceedings are disqualified from adjudicating at quarter sessions under this section. *R. v. JJ. Cumberland*, 42 J. P. 361.

As to comprising more districts than one in any order, see 27 & 28 Vict. c. 101, s. 4.

There is not to be included in any highway district any parish or part within the limits of a borough without the consent of the council and of the vestry of the parish. Where any parish is situate in more than one county the whole shall be deemed to be in the county within which the church, or (if none) the greater part of such parish is situate. 25 & 26 Vict. c. 61, s. 7. Where a parish is divided into townships, hamlets, &c., the justices may, in their provisional order, combine such places, or any two or more of them, and any such combination is to be deemed a highway parish, and they may declare that no separate waywarden shall be elected for such places, and that such parish shall be subject to the same liabilities which were before maintained by such places separately, as if their liabilities had attached to the parish; and that a waywarden shall be elected for such parish as a whole; and all provisions in relation to parishes will be applicable to the parish formed by such combination. 27 & 28 Vict. c. 101, s. 7. See *R. v. West Riding JJ.*, 34 L. J. M. C. 227; 12 L. T. 580.

Any place in which highways are repaired otherwise than out of a highway rate is to be deemed a place separately maintaining its own highways. 27 & 28 Vict. c. 101, s. 5. Where a township, tithing, hamlet, or place is situate in two or more parishes, each part of such place may be combined with the parish in which it is situate, and the justices may declare that any poor law parish shall become a highway parish entitled to return a waywarden to the highway board of the district; and no rate can be separately levied or separate waywardens elected in any township, tithing, hamlet, &c., of such poor law parish. Sect. 7. But where no surveyors or waywardens have been elected the justices are to make provision for the election of a waywarden. 39 & 40 Vict. c. 61, s. 5; 42 & 43 Vict. c. 54, s. 7.

Where a place is partly within a borough, the justices may include in a highway district the outlying part of such place; and

where the outlying part has been included in a highway district, each part is to be a place separately maintaining its own highways, and a waywarden elected. 27 & 28 Vict. c. 101, s. 8.

The justices may appoint overseers for any extra-parochial place to constitute it a highway parish, sect. 9; and any place where overseers are appointed is to be deemed a parish separately maintaining its highways; and where any place is annexed to an adjoining parish such place will be deemed annexed to such parish for the maintenance of the highways. 25 & 26 Vict. c. 61, s. 32. Where a place is not contiguous to the parish of which it is a part, such outlying part may be annexed to a district, and deemed a parish separately maintaining its highways. Sect. 33.

No objection can be made to the validity of any proceeding relating to the formation of a highway district after three months from the date of the final order under which it is formed. Sect. 8.

Contiguous places in different counties are subject to the jurisdiction of the justices constituting them a highway district, as if all such places were in such county; but the orders will not be valid unless orders to the same effect are passed by the justices of every other county in which any of the places are situate. 27 & 28 Vict. c. 101, s. 13.

An objection to the validity of an order is made within the three months, if made on moving for a rule *nisi* for a *certiorari* within that time. *R. v. Lindsey JJ.*, L. R. 1 Q. B. 68; 35 L. J. M. C. 90.

Alteration of District.] Any highway district may be altered by the addition or subtraction of any parishes, or the separation of any places consolidated by any previous order, and new districts may be formed by the union of existing districts, or any parishes forming part of any districts, and the number of waywardens for any parish may be altered, or any highway district may be dissolved. 25 & 26 Vict. c. 61, s. 39, and 27 & 28 Vict. c. 101, s. 14.

2. Highway Boards.

The highway board consists of the waywardens elected and of the justices for the county residing in the district, and is a body corporate having a perpetual succession and a common seal, with a power to hold lands. 25 & 26 Vict. c. 61, s. 9. All property vested in any surveyor of the district will vest in the highway board, subject to liabilities. Sect. 11. A justice resident in a

place prohibited from being included in a highway district which adjoins such district is to be a member of the board subject to this, that if he would be entitled to be a member of two boards in the same county, he must declare of which board he elects to be a member, and will not be entitled to be a member of any other board. 27 & 28 Vict. c. 101, s. 20.

Election of Waywardens.] In every parish part of a highway district is to be elected every year a waywarden, or such number of waywardens as determined by order of justices. 25 & 26 Vict. c. 61, s. 10. Such waywardens are to be elected at the meeting at which a surveyor would have been appointed. The justices shall, in their order, make provision for the election of waywardens where no surveyors were elected previously. Waywardens are re-eligible, and continue in office until 30th of April in the year following their election. 41 & 42 Vict. c. 77, s. 11. See *R. v. Cooper*, L. R. 5 Q. B. 457; 39 L. J. Q. B. 273.

Conduct of Business.] The board are to make regulations with respect to the summary notice, place, management, and adjournment of their meetings; but the first meeting is to be fixed by the justices.

One meeting must be held in each period of four months, and one between the 7th and 14th of April. The board are to appoint a chairman and vice-chairman for the year.

All orders for payment of money and precepts must be signed by two members authorised to sign them by resolution, and countersigned by the clerk. 27 & 28 Vict. c. 101, ss. 26, 27, sch. 1.

Appointment of Officers.] The board must, by writing under their seal (or by minute signed by the chairman and countersigned by the clerk), appoint a treasurer, clerk, and surveyor: they may also appoint an assistant surveyor. These appointments, except the first, cannot be made unless notice in writing has been sent to every member. 25 & 26 Vict. c. 61, s. 12; 27 & 28 Vict. c. 101, s. 30.

If the board make default in appointing a treasurer, clerk, and surveyor, the justices may appoint to any of the said offices. Sect. 45. Not more than one such office of the same board can be held by the same person, or by persons in partnership, or in the relation of employer and clerk, agent or servant. 25 & 26 Vict. c. 61, s. 13.

The treasurer is to receive all moneys paid for the use of such board, and make payments under orders, and once in every three

months, or oftener if required, deliver an account to the clerk. Sect. 14. The clerk must attend all meetings of the board, conduct the correspondence, and keep minutes of the proceedings of such board. Sect. 15. The surveyor is to act as the agent of the board in carrying into effect all the works and duties required, and shall conform to the orders of the board. Sect. 16.

Highway boards may unite in appointing a surveyor, who will, in relation to each of the boards, have all the powers and duties of a district surveyor. 41 & 42 Vict. c. 77, s. 6. Where members of a highway board acting through their surveyor had exceeded their powers, it was held that the surveyor was personally liable for the trespass. *Mill v. Haucker*, L. R. 10 Ex. 92; 44 L. J. Ex. 49.

SECTION V.—URBAN SANITARY AUTHORITIES UNDER PUBLIC HEALTH ACT, 1875.

Any place included in a highway district may adopt the Public Health Act, and upon such adoption will cease to form part of such district. 25 & 26 Vict. c. 61, s. 41; 38 & 39 Vict. c. 55, ss. 313, 343. Every urban authority is to execute the office of, and have all the powers and duties of, surveyors of highways, and also have all the powers and liabilities which, by the Highway Act, 1835, &c., are given to the inhabitants in vestry within their district. And all acts required to be done by the surveyor of highways may be done by the urban authority. Sect. 144.

The inhabitants within any urban district are not liable to the payment of highway rate for making or repairing highways without such district. Sect. 145. Any urban authority may agree for the making of roads for the public use, and may agree to adopt and maintain any bridge. They may also take on themselves the maintenance of any turnpike, street, or road over any county bridge. Sect. 147. No part of the expenses of maintaining any disturnpiked main road are to be included in any order made on any borough having separate quarter sessions. 41 & 42 Vict. c. 77, s. 13. All streets, being highways repairable by the inhabitants within any urban district, will be under the control of the urban authority, who must cause all such streets to be repaired. 38 & 39 Vict. c. 55, s. 149. And see sects. 145—154, as to the powers of the urban authorities as to streets.

Cost of Repairs.] In any urban district the cost of repair of highways will, where the whole of the district is rated for paving, water supply, and sewage, be defrayed out of the general district rate, and where parts are not so rated, out of a highway rate separately levied in those parts. 38 & 39 Vict. c. 55, s. 216.

The cases which have been decided on the liability of highway authorities in cases of injury from neglect and from obstruction in streets, &c., are collected in *Baker on Highways*, p. 5.

In Boroughs.] The council of every borough, upon the petition of the majority of the ratepayers at a public meeting, may adopt such parish highways as the council consider advisable, and apply the rates levied for the repairs of highways within such borough in maintaining such parish highways. 25 & 26 Vict. c. 61, s. 45; and see 13 & 14 Vict. c. 64, s. 2.

SECTION VI.—RURAL SANITARY AUTHORITIES UNDER PUBLIC HEALTH ACT, 1875.

Where a highway district is coincident in area with a rural sanitary district, the rural sanitary authority of such district may, with the consent of the county authority, become the highway board (41 & 42 Vict. c. 77, s. 4); whereupon all property vested in the highway board becomes vested in the rural sanitary authority. Sect. 5. All expenses incurred by a rural sanitary authority in the performance of their duties as a highway board are to be deemed general expenses of such authority within the meaning of the Public Health Act, 1875. *Id.*

SECTION VII.—HIGHWAY RATE.

How made.] In order to raise money for carrying the Act of 1835 into execution, a rate is to be made by the surveyor upon all property liable to be rated to the relief of the poor; provided that the same rate shall also extend to such woods, mines and quarries of stone, or other hereditaments as have heretofore been usually rated to the highways. Every rate is to be signed by the surveyor and allowed by two justices of the peace, and published in the same way as poor rates. 5 & 6 Will. 4, c. 50, s. 27.

Inspection of Poor Rate.] In order to enable the surveyor to form a proper judgment of any rate to be made in pursuance of the

Act, he may at all reasonable times inspect any of the poor rates of the parish of which he is surveyor, or the books wherein the assessments thereto are entered, without fee, and may make copies thereof or take extracts therefrom. A penalty of 5*l.* is imposed on any person, in whose custody or power any rates or books are, who refuses or neglects to produce the same or to allow copies or extracts to be made. Sect. 28.

Contents and Amount of Rate.] Every rate is to contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of such premises or property, and is to specify the sum in the pound at which it is made. No rate is to exceed at any one time the sum of tenpence in the pound, or the sum of two shillings and sixpence in the pound in the whole in any one year. But, with the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, assembled at a meeting specially called for that purpose (of which ten days' notice must be given by the surveyor), the rate may be increased to such sum as the inhabitants so assembled think proper. Sect. 29.

Errors in Rate.] Whenever it appears to the surveyor that there is any omission in any rate, he may, with the consent of the justices at a special sessions for the highways, cause the rate to be corrected.

Rating Landlords.] In parishes in which the overseers have power by local Acts of Parliament to compound with the landlords of houses, and, in case of their refusal to compound, to rate such landlords as the occupiers, the surveyor is to have the same powers, to compound and enforce composition, and, in case of refusal by the landlords, to assess them in the same proportions to the rates. Sect. 30.

Payment Excused.] The justices, on proof of poverty, may direct that any person shall be excused from payment of the rate. Sect. 32.

Recovery of Rate.] The surveyor has the same powers as the overseers for the recovery of any rate. Sect. 34.

Appeal.] There is an appeal to quarter sessions against the rate. Sect. 105.

Expenses of Highway Board.] The salaries of the officers appointed, and any other expenses incurred by any highway board for the common benefit of the parishes, will be charged to a distinct fund to be contributed by the parishes in proportion to their rate-

able value ; but the expenses of maintaining the highways and all other expenses will be a separate charge on each parish. 27 & 28 Vict. c. 101, s. 32. For obtaining payment from the parishes of the sums to be contributed, the highway board will issue precepts to the waywardens or overseers, stating the sums to be contributed, and requiring the officer to pay the sum to the treasurer. Where a highway parish is not a parish separately maintaining its own poor, or where it has, for seven years preceding 1862, been the custom to levy a highway rate in respect of property not subject to poor rates, the precept is to be addressed to the waywarden, and in all other cases to the overseers. Sect. 33.

All waywardens and overseers have the same powers for levying any rates required for a highway board as they have in levying rates for the poor, or as they would have, if the parish were a place separately maintaining its own poor (sect. 34); and all expenses incurred in maintaining the highways must, after the 25th of March, 1879, be charged on the district fund ; but if a highway board think it just, by reason of exceptional circumstances, that any parishes should maintain their own highways, they may, with approval of the county authority, divide their district, and charge on each the expenses of maintaining the highways in such part, so that each part consist of one or more highway parishes. 41 & 42 Vict. c. 77, s. 7. All expenses incurred in the performance of their duties as a highway board, will be deemed general expenses, within the meaning of the Public Health Act, 1875. Sect. 4.

SECTION VIII.—REPAIR OF HIGHWAYS.

Duty to Repair.] The primary obligation of repairing highways is, by the common law, laid upon the parishes in which they are situated; and the obligation exists equally where a road, which has been proved to be a highway, has been but little used, and has never been repaired with hard materials, and although it passes into another parish which denies it to be a public highway. *Reg. v. Claxby*, 24 L. J. Q. B. 223. But the common law does not impose the duty of making *new* roads or widening old ones, either upon parishes or individuals. *R. v. Devon*, 4 B. & C. 670. These objects are provided for by the Highway Act, or by turnpike or local

Acts passed from time to time as the exigencies and convenience of the public may require.

The common law obligation on the parish is to repair and amend all existing highways; but if a road has ceased to exist, as where the soil over which it passed has been washed away by the sea, the parish is not compellable to reinstate it. *R. v. Paul*, 2 M. & Rob. 307; *Reg. v. Bamber*, 5 Q. B. 279; *Reg. v. Hornsea*, 1 Dear. C. C. R. 291; 23 L. J. M. C. 59. Where a road across an inlet of the sea, passable only at low water, becomes impassable by reason of the tide washing away the materials and leaving a deposit of mud, the parish is not bound to do repairs which from the nature of things must be always ineffectual. *R. v. Landulph*, 1 M. & Rob. 393. Mere muddiness or inconvenience short of a road being foundrous, is not a want of repair for which a parish is liable. *Reg. v. Stretford*, 2 Ld. Raym. 1169.

At common law, each parish is liable to repair those portions of all common highways which lie within its own limits. *Hawk. P. C.* b. 1, c. 76, s. 5. And, therefore, where a township or particular district of a parish is exempted from the whole or any part of this burthen by an express Act of Parliament, it must necessarily fall on the rest of the parish. *R. v. Sheffield*, 2 T. R. 106. This primary obligation upon the parish is so strong and absolute, that if other persons or public bodies made chargeable by statute (as commissioners, trustees, &c.) become insolvent—*Anon.*, 1 Ld. Raym. 725; or neglect to repair when necessary—*R. v. St. George, Hanover Square*, 3 Camp. 222—the duty of the parish revives, unless it is expressly exempted by the statute. *R. v. Netherthong*, 2 B. & Ald. 179; *Reg. v. Lordsmere*, 15 Q. B. 689. But the parish, after making the proper repairs, may seek a remedy over against the commissioners or trustees, &c. *Reg. v. Trustees of Oxford and Witney Roads*, 12 A. & E. 427. A mere agreement by an individual to repair a highway will not relieve the parish from its common law duty. 1 *Vent.* 90; *R. v. Mayor of Liverpool*, 3 East, 86; *R. v. Scarisbrick*, 6 A. & E. 509. In order to get rid of this duty, the parish must show an obligation on some other person or body equally durable with that binding the parish, and founded upon a consideration equally durable as the burthen. *R. v. St. Giles*, 5 M. & Sel. 265; *R. v. Eastrington*, 5 A. & E. 765. Turnpike trustees or others having funds applicable to the repair of a highway are not liable to be indicted for its non-repair; *R. v.*

Netherthong, supra ; and even if made so liable by a statute which reserves the liability of the parish to contribute to the repairs, the parish may still be indicted. *Reg. v. Brightside Bierlow*, 13 Q. B. 933.

Adoption by the Parish.] With respect to highways which have been dedicated to the public, it has been decided that an adoption of them by the parish is not necessary at common law. *R. v. Leuke*, 5 B. & Ad. 469. The absence of repair by the parish is strong evidence to prove the road not a public one, but its conduct in acquiescing or not is immaterial. But now, by 5 & 6 Will 4, c. 50, s. 23, no road or occupation way made by any person, or any road set out as a private driftway or horsepath in any award of commissioners under an Inclosure Act, shall be deemed a highway which the inhabitants of any parish shall be liable to repair, unless the person gives three months' notice in writing to the surveyor of his intention to dedicate such highway to the use of the public, and shall make the same to the satisfaction of the surveyor and two justices, who are to view the same, and to certify that such highway has been made in a substantial manner and of the width required by this Act ; and in such case, after the said highway shall have been used by the public, and kept in repair by the said person for twelve months, such highway shall be kept in repair by the parish : provided that if the vestry shall deem such highway not to be of sufficient utility to justify its being kept in repair at the expense of the parish, the question shall be determined at the discretion of the justices.

This section applies only to roads which had not been completely dedicated when the Act passed (31st August, 1835); *Reg. v. Westmark*, 2 M. & Rob. 305 ; and a new road may become a highway for all purposes except that of liability to repair, although the section has not been complied with. *Roberts v. Hunt*, 15 Q. B. 17.

Where a statute authorises the making of a road from one point to another, and declares that it shall be a highway, the completion of the entire road is a condition precedent to the liability of the district through which it passes to repair attaching. *R. v. Cumberworth*, 3 B. & Ad. 108 ; *R. v. Cumberworth*, 4 A. & E. 731. And the same was held in another case, though a part of the road had been completed between thirty and forty years, and actually repaired from time to time by the parish. *R. v. Edge Lane*, 4 A. & E. 723.

The performance of statute duty, under an Act which was to remain in force for a limited period only, was held not to bind the parish to repair the road after the Act had expired. *R. v. Mellor*, 1 B. & Ad. 32.

The whole Parish liable.] The duty to repair rests *prima facie* upon the whole parish; and, therefore, if it is sought to throw it upon some particular part of it, the precise grounds upon which the liability is thus shifted must be shown. *Austin's case*, 1 Vent. 189; *R. v. Penderryn*, 2 T. R. 513. So if a parish extend into two counties, and one of its roads lying in one county be out of repair, the whole parish, and not that part of the parish, or those inhabitants who live in that portion of the parish which is in the same county as the road, must be proceeded against. *R. v. Clifton*, 5 T. R. 198.

Liability of a particular District.] Although the general common law liability of repairing highways is thus cast upon the parish at large in which the highway lies, yet parishes may be relieved, in some instances, from this responsibility, with respect at least to some of their roads. It seems doubtful whether the inhabitants of an extra-parochial hamlet (not included in a larger district, the inhabitants of which are bound to repair the whole) are, in this respect, in the same situation as the inhabitants of a parish, and liable, as of common right, to repair their own roads. *R. v. Kingsmoor*, 2 B. & C. 190. But a hamlet or other district less than a parish may be liable by custom or prescription to repair the highways within it. *R. v. Great Broughton*, 5 Burr. 2700; *R. v. King's Newton*, 1 B. & Ad. 826. An individual cannot be liable, as such, by prescription. 13 Rep. 33; 2 Will. Saund. 158, h.; *R. v. Kerrison*, 1 M. & Sel. 435.

But it is said that a corporation aggregate may be compelled to repair a road, by force of a general prescription that it ought and hath used to do so, without showing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation in judgment of law never dies; and, therefore, if it were ever bound to such a duty, it must needs continue to be so always. Neither is it any plea that such a corporation has always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do. 1 Hawk. P. C. b. 1, ch. 76, s. 8. A custom for a district to repair its own highways is good, although no particular reason can be

shown for it. *R. v. Ecclesfield*, 1 B. & Ald. 348. But if it be sought to charge a parish or district with the repair of a highway not lying within it, a consideration must be shown, for such a charge (if it can be supported at all) must be by prescription, and cannot be by custom; and of every prescription there ought to be intended a lawful beginning, 2 *Will. Saund.* 158, i, note o; *R. v. St. Giles, Cambridge*, 5 M. & Sel. 260; *R. v. Machynlleth*, 2 B. & C. 165; *R. v. Bishop Auckland*, 1 A. & E. 744.

When the origin of a way can be shown, the prescription to repair it is necessarily destroyed, since it must rest upon immemorial usage. *R. v. Hudson*, 2 Stra. 909; see also *R. v. Scarisbrook*, 6 A. & E. 909; *Reg. v. Westmark*, 2 M. & Rob. 305.

Liability to Repair Ratione Tenuræ.] An individual may be liable to repair a highway by reason of his tenure of certain land, if it appear that those who have held the land have been immemorially accustomed to repair the highway. *R. v. Hayman*, M. & W. 401; *R. v. Middlesex*, 3 B. & Ad. 210. In such a case it is presumed that the land was originally granted in consideration of such repairs being done. The occupier, and not the owner, of the land is the person to be indicted for non-repair, since the public are not bound to inquire further than who is in the visible enjoyment of the property charged with the duty. *Reg. v. Watts*, 1 Salk. 357; see *Baker v. Greenhill*, 3 Q. B. 148; *R. v. Sutton*, 3 A. & E. 597. An individual or a corporation may likewise become liable to repair a road by reason of the proprietorship of a navigation, or by charter; *R. v. Kerrison*, 1 M. & Sel. 435; *Henley v. Mayor of Lyme Regis*, 5 Bing. 51; and in such case the liability will not be limited merely to the amount of tolls received. *Reg. v. Sheffield Canal Company*, 13 Q. B. 913. A highway board may repair a highway, repairable *ratione tenuræ*, and recover the expenses. 25 & 26 Vict. c. 61, s. 34.

No person through whose land a highway passes becomes liable for the repair of such highway by erecting fences between such and the land, if erected with consent of the highway board, or of the surveyor having jurisdiction. Sect. 46.

Where any person is liable, by tenure or otherwise, to repair any highway in a highway district, the person so liable (or the highway board, 27 & 28 Vict. c. 101, s. 34) may apply to a justice for the purpose of making such a highway, to be maintained by the parish; and such justice must issue summonses requiring the waywarden,

the surveyor, and the party liable to appear before the justices, who shall determine the matter, and may make an order that such shall be a highway to be maintained by the parish, and fix a sum to be paid by such person to the board in discharge of all claims. Sect. 35. There is an appeal from such order to quarter sessions.

Where the inhabitants are desirous of undertaking the maintenance of any driftway or occupation road, the surveyor may, at the request of the owner and occupier, apply to the justices to declare such road to be a public highway, when the justices may declare the same to be a carriage road, to be repaired at the expense of the parish. Sect. 36.

Burthen may be transferred to Parish.] By 5 & 6 Will. 4, c. 50, s. 62, any person liable to repair any highway by reason of tenure of lands, or the surveyor may, with consent of the vestry, apply to any justice for the purpose of making the said highway a parish highway, and the said justice is required to summon the surveyor, or the party liable to repair the highway; and in case they decide that the highway shall become a parish highway and be repaired by the surveyor of the said parish, they are to order the proportion of the expenses of repairing it to be annually paid by such person to the surveyor. But the justices may, instead, order a certain sum to be paid to the surveyor in full discharge of all claims in respect of the repairs. When the sum to be paid in discharge of all claims exceeds 100*l.*, it is to be vested, in the name of the minister, churchwardens, and surveyors of the parish, in government securities, and the dividends applied towards the repairs of the highways. If it does not exceed 100*l.*, such sum, with the consent of the vestry and the justices, may be paid to the surveyor towards the repair of the highways. See also sect. 58, as to dividing highways in two parishes which are repairable *ratione tenuræ*.

Lands given for Maintenance of Ways.] By sect 50, any lands given for maintenance of highways are to be let at the most improved value, without fine, for any term not exceeding ninety-nine years, with the consent of the justices.

Liability by Inclosing.] In ancient times, when roads were frequently made through uninclosed lands, and were not formed with that exactness which the exigencies of society now dictate, it was part of the law that the public, when the road was out of repair, might pass along the land by the side of the road. The

right on the part of the public was attended with this consequence, that although the parishioners were bound to the repair of the road, yet if an owner excluded the public from using the adjoining land, he took upon himself the *onus* of repairing the road. If the same person was the owner of the land on both sides, and inclosed both sides, he was bound to repair the whole of the road. If he inclosed on one side only, the other being left open, he was bound to repair to the middle of the road; and where there was an ancient inclosure on one side, and the owner of lands inclosed on the other, he was bound to repair the whole. *R. v. Staughton*, 2 Saund. 160; 1 *Hawk. P. C. c. 76*, s. 7. Hence it followed as a natural consequence, that when a person inclosed his land from the road, he did not make his fence close to the road, but left an open space at the side of the road, to be used by the public when occasion required. This appears to be the most natural and satisfactory mode of explaining the frequency of wastes left at the sides of roads, the object being to have a sufficiency of land for passage by the side of a road, when it was out of repair. *Steel v. Prickett*, 2 Stark. R. 469. This conditional right to go upon the adjacent ground is not restrained by the land being cultivated or sown with grain. 1 *Roll. Ab.* 390 (B.) pl. 1; *Absor v. French*, 2 Show. 28; *Taylor v. Whitehead*, Doug. 749. The owner who so incloses his lands next adjoining a highway is bound to make a *perfect good* way, and shall not be excused by merely making it as good as it was at the time of the inclosure, if it were then any way defective. 1 *Hawk. P. C. c. 76*, s. 6; 2 *Will. Saund.* 161. And, if the road be insufficient, any of the King's subjects may justify breaking down the inclosure, and passing as before on the adjoining land. *Anon.*, 3 Salk. 182. But the party thus rendered liable may discharge himself of the burthen by throwing down the inclosure and restoring the passage to its former condition. 1 *Hawk. P. C. c. 76*, s. 7. 25 & 26 Vict. c. 61, s. 46, enacts that no person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between such highway and the adjoining land, if erected with the written consent of the highway authority.

Where a highway is inclosed under the authority of an Act of Parliament for dividing and inclosing open common fields, the person whose allotment abuts upon the highway, and who incloses, is not bound to repair it. *R. v. Flecknow*, 1 Burr. 461.

There is no liability on the parish to repair private roads ; therefore, commissioners under an inclosure Act have no power to direct the inhabitants at large to maintain private ways set out by them. *R. v. Richards*, 6 T. R. 534 ; *R. v. Cottingham*, 6 T. R. 20. But where they did so, and the private road was used by the public and repaired by the parish for eighteen years, it was holden to be a question for the jury whether there had not been a dedication to the public. *R. v. Wright*, 4 B. & Ad. 683. It seems that the public is entitled to the whole space through which the road passes between inclosures set out under an Act of Parliament, unless the contrary be shown, although the whole may, from economy, not have been kept in repair. S. C.

Liability where Highway diverted.] Where a highway has been turned or diverted under the provisions of the 5 & 6 Will. 4, c. 50, the parish or other party liable to repair the old highway is liable to repair the new highway, without reference to its parochial locality. 5 & 6 Will. 4, c. 50, s. 92.

Highways in Two Parishes.] If a highway extends into two or more parishes, each is separately indictable for the non-repair of so much of the highway as lies within its limits. In order to remedy the inconveniences which frequently happened where the boundaries of parishes passed across or through the middle of a common highway, and one side of such highway was situated in one parish, and the other side in another parish, it is provided by the 5 & 6 Will. 4, c. 50, s. 58, that the justices, on complaint of the surveyor that there is a highway, one side whereof ought to be repaired by one parish, and the other side by another, may summon the surveyor of such other parish to appear before them, and finally determine the matter in form following, viz., they are to divide the whole of such highway by a transverse line crossing it, into equal parts, or into such unequal parts and proportions as, in consideration of the soil, waters, floods and inequality of the highway, or any other circumstances attending the same, they think right, and order that the whole of such highway on both sides thereof, in any of such parts, shall be repaired by one of such parishes, and that the whole thereof on both sides, in the other of such parts, shall be maintained and repaired by the other of such parishes. The plan of the highway and the allotment thereof are to be filed with the clerk of the peace of the county. The justices are to cause such posts, stones or other boundaries to be placed and set up in such

highway, as in their judgment shall be necessary for ascertaining the division and allotment thereof. An order dividing a highway transversely under this section is conclusive as to the liability of the two parishes or parties to repair. *Reg. v. Hickling*, 7 Q. B. 880; 14 L. J. M. C. 177.

After such order such parishes are bound to repair the parts of such highways so allotted to them. Sect. 59.

And all costs incurred by the proceedings are to be apportioned between such parishes by justices. Sect. 60.

Such provision is not to affect, change or alter any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes or townships, otherwise than for the purpose of amending and keeping in repair such particular portion of the highway. Sect. 61.

Repairs ordered by Special Sessions.] By 5 & 6 Will. 4, c. 50, s. 94, if any highway is out of repair, any justice may issue a summons, requiring the surveyor of the parish to appear before the justices, who must either appoint some person to view and report thereon, or themselves view the highway; and if it appear that the highway is not in repair, convict the surveyor, or other party liable, in a penalty not exceeding five pounds, and to order the surveyor to repair such highway within a limited time; and in default the surveyor is to forfeit a sum of money equal to the sum which the said justices judge requisite for repairing such highway. In case more parties than one are bound to repair the highway, the justices are to direct what proportion shall be paid by each of the said parties. If the highway out of repair is part of a turnpike road, the justices are to summon the treasurer or surveyor of such turnpike road, and their order is to be made on such treasurer or surveyor or other officer as aforesaid. Provided that the justices are not to have power to make such order in any case where the duty or obligation of repairing the highway comes in question. Under this section the justices have a discretion as to convicting if the road is reported to be out of repair. *R. v. JJ. Wilts*, 8 Dowl. P. C. 717. As to summoning the waywarden of a highway board, see 25 & 26 Vict. c. 61, s. 18, and *post*, p. 234. Any waywarden of a highway parish of a district, or any ratepayer of such parish, may appeal to quarter sessions in respect of any order of the highway board, for repair of any highway, on the ground that such highway was not legally represented by the parish. 27 & 28 Vict. c. 101, s. 38.

By Indictment.] By sect. 95, if on the hearing of such summons respecting the repair of any highway, the obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, the justices are to direct an indictment to be preferred at the next assizes or quarter sessions for the county. If the liability to repair is denied, it is imperative on the justices to order an indictment to be preferred. *Reg. v. JJ. Surrey*, 21 L. J. M. C. 195.

Where the summons is in respect of the repair of a highway within the jurisdiction of a highway board constituted under 25 & 26 Vict. c. 61, and the liability to repair is denied by the waywarden on behalf of his parish, the justices must direct a bill of indictment to be preferred to the next assizes or quarter sessions. 25 & 26 Vict. c. 61, s. 19.

Where complaint is made to the county authority that the highway authority of any highway area within their jurisdiction has made default in repairing any highway, the county authority, if they are satisfied that such is the case, are to make an order limiting a time for the performance of the duty of the highway authority, in the matter of such complaint. If the highway authority decline to comply with such order until their liability to repair has been determined by a jury, the county authority must either modify or cancel their order, or submit the question to a jury, in which case they must direct an indictment to be preferred to next assizes. 41 & 42 Vict. c. 77, s. 10.

“County authority” means the justices of a county in general or quarter sessions assembled.

“Highway authority” means, as respects an urban sanitary district, the urban sanitary authority; and, as respects a highway district, the highway board; and, as respects a highway parish, the surveyor. Sect. 38.

By Information.] There is another way besides that of indictment by which parishes, districts or parties liable to repair highways may be prosecuted for suffering them to decay, or neglecting to repair them when necessary, viz., by Information. An information may be granted at the discretion of the Queen's Bench Division, *R. v. Essex*, T. Raym. 384. But the court will not give leave to file an information, except in cases of great importance, or where the grand jury have been guilty of gross misbehaviour in refusing to find the bill of indictment; because the fine, on conviction upon

an information, cannot be applied to the repair of the road, as it always is upon an indictment. *Chitty's Crim. L.* 569; *Reg. v. Upton St. Leonards*, 10 Q. B. 827.

. *Indictment.*] Except in such cases as last mentioned, the mode of proceeding to compel the repair of a highway must now be by indictment against the parish, district or person liable to repair it.

Requisites of Indictment against a Parish.] An indictment against a parish for not repairing must show three things: that the road in question is a highway; that it is situate within the parish; and that it is out of repair.

The cases which have been decided on proceeding for neglect to repair highways are collected in *Baker on Highways*, p. 58. As to the form of the indictment for non-repair, and the facts necessary to be proved in support of it, see Roscoe's or Archbold's Criminal Pleading and Evidence. On the trial of any proceedings for the non-repair of any public highway or bridge, or for a nuisance to the same, every defendant, and the wife or husband, are competent witnesses. 40 & 41 Vict. c. 14, s. 1.

Certiorari.] The indictment may be removed by *certiorari* by the defendant, upon an affidavit stating that the right or title to repair may come in question. See 5 Will. & M. c. 11, s. 6; 5 & 6 Will. 4, c. 50, s. 95; *R. v. Taunton St. Mary's*, 3 M. & Sel. 465; *R. v. Sandon*, 23 L. J. M. C. 129. And it might without such affidavit be so removed, at the instance of the prosecutor, even before the repeal of the 13 Geo. 3, c. 78, s. 24. *R. v. Bodenham*, Cowp. 78.

Judgment.] As the object of this prosecution is not the punishment of the defendant, but the repair of the highway, it is not indispensably requisite that he should be in personal attendance at the time judgment is pronounced. And where a district is indicted, this is, of course, impossible. 1 *Salk.* 55; *Hawk. P. C.* b. 2, c. 48, s. 17.

Amount of Fine.] The judgment usually is, that the defendants pay a fine, and repair the road. *Bro. Abr. Nuisance*, 49; *R. v. Stead*, 8 T. R. 142. But upon a certificate of a justice of the peace that the road is in good condition at the time judgment is about to be pronounced, the court will merely assess a nominal fine. And if the certificate state that the way has since been diverted by the order of two justices, and that so much thereof as is retained is

in repair, the sentence will also be for a nominal penalty. *R. v. Incledon*, 13 East, 164. But see *R. v. Wingfield*, 1 W. Bl. 602.

If it appear that materials cannot be procured without going to a considerable distance, it must be left to the presiding judge, in each particular case, to determine what to do in passing judgment. *Parish of Whaplode, Lincolnshire*, M. T. 1826, MS.

Levy and Application of Fines.] See 5 & 6 Will. 4, c. 50, s. 96.

The fine under this section can only be applied to the amendment of the road. The court will not order it to be paid to trustees who have done repairs previously to the conviction. *R. v. Barnard Castle*, 1 Q. B. 246.

By the 3 Geo. 4, c. 126, s. 110, if a parish is indicted for not repairing a highway, being a turnpike road, and a fine for its repair is imposed, it is to be apportioned between the parish and the trustees of the turnpike road, as the court think fit.

Costs.] There is a very material difference in the power of the court as to costs where the indictment is directed under 5 & 6 Will. 4, c. 50, s. 95, and where it is directed under 25 & 26 Vict. c. 61, s. 19. The former enactment gives the presiding judge no discretion as to the costs, and directs that they shall be paid out of the highway rate, whereas the 25 & 26 Vict. c. 61, s. 19, gives him a discretion. The costs of an indictment preferred under 41 & 42 Vict. c. 77, s. 10, are in discretion of court. The decisions as to costs are collected in Roscoe's and in Archbold's Criminal Evidence.

Conveyance of Materials for Repairing Highways.] By 5 & 6 Will. 4, c. 50, s. 35, two ratepayers, within six days after the appointment of the surveyor, may, by notice in writing, require him to call a meeting of the ratepayers within eight days, and give six days' previous intimation, and if a majority consent, the ratepayers keeping a team or teams of two or more horses may divide, in proportion to the rate assessed, the carrying of the materials required for the repairs of the highways, and shall be paid by the surveyor within one month after such service, per cubic yard of material per mile, as shall be fixed by the justices for the highways after the twenty-fifth day of March in every year, which rate the said justices are required to fix at such special sessions. Such work to be performed at such times and places and in such manner as the surveyor may direct (the periods of spring, seed-time and

harvest excepted); and in case the surveyor shall not approve of the manner in which it is performed, the justices may, at a special sessions for the highways, hear the complaint of the surveyor in that respect, and award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable. This does not apply to any district formed under the Highway Act of 1862.

Surveyor to contract for.] By sect. 46, in every parish the surveyor may, with the consent of the vestry, contract for the materials required. If the surveyor is concerned in the contract or work he is liable to a penalty, and is rendered incapable of being employed as a surveyor. See *ante*, p. 217.

Highway Board.] The highway board may contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining the highways of any parish within their highway district for any period not exceeding three years. 27 & 28 Vict. c. 101, s. 52.

And may also contract to repair highways for the repair of which others are liable. 27 & 28 Vict. c. 101, s. 22.

Any waywarden may contract for the supply or cartage of materials within the parish with the licence of two justices granted on the application of the clerk to the Highway Board with its consent. 27 & 28 Vict. c. 101, s. 20.

The surveyor of any highway district may raise stone or other material within any highway district for the repair of any turnpike road which may be thrown upon a highway district. 33 & 34 Vict. c. 73, s. 11.

Stamp.] A contract made pursuant to the Highway Acts relating to the making or repairing of highways requires a 6d. stamp. 33 & 34 Vict. c. 97, Sch.

Where got—Waste Land, &c.] By sect. 51, every surveyor may, in any waste land or common ground, river or brook, within the parish for which he is surveyor, or within any other parish wherein gravel, sand, stone or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), search for, and carry away the same, so that the surveyor doth not thereby cause damage, and likewise may gather stones upon any lands within the parish without making any satisfaction for the materials; but only for damage done to the lands of any person by carry-

ing away the same; but no such stones are to be gathered without the consent of the owner of such lands, or a licence from two justices.

Sea-beach.] By sect. 52, nothing relative to the gathering of stones or materials is to extend to any quantity of stones or other materials thrown up by the sea, where the removal would cause damage by inundation to the lands adjoining, or increased danger of encroachment by the sea. *Padwick v. Knight*, 7 Exch. 854.

By 8 & 9 Vict. c. 118, s. 72, where waste lands are enclosed, an allotment may be made for supplying materials for the repair of the roads, which is to be vested in the surveyor and let by him, subject to the right of getting stone and other materials there.

Lands for Supply.] By 5 & 6 Will. 4, c. 50, s. 48, the surveyor may, with the consent of the vestry, and he is required, with the consent of the justices, to sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the parcels of land which have been allotted to the parish for the repair of the highways, and from which the materials have been exhausted, for such price as the justices deem fair and reasonable, and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof.

This power of sale is extended to all lands belonging to parishes, which shall have been used for obtaining materials for highway repair, and which materials have become exhausted. 8 & 9 Vict. c. 71, s. 1.

Parish lands allotted for materials which have become exhausted fall within the operation of the Parish Property Acts, 1835 and 1842. Before the sale the Local Government Board are to hear any objections or claims, which, if disputed, are to be determined in the High Court or the County Court. The land may be at first offered to adjoining owners, reserving manorial mineral rights, and the produce is to be applied to the repair or improvement of the district or parish highways. 39 & 40 Vict. c. 62.

In Inclosed Lands.] By 5 & 6 Will. 4, c. 50, s. 54, every surveyor may, by licence in writing from the justices, search for and take materials necessary to be employed in the amendment of the highways, the surveyor making such satisfaction as shall be settled by the justices.

By 4 & 5 Vict. c. 51, all lands in the occupation of persons for agricultural purposes are to be considered inclosed lands, though

not separated from other lands or the highway by any fence or other inclosure.

Materials cannot be obtained from a regulated or metropolitan common without consent of persons having the regulation thereof, or under an order of justices. 39 & 40 Vict. c. 56, s. 20.

Notice of taking.] By 5 & 6 Will. 4, c. 50, s. 53, no surveyor shall gather materials from any inclosed land until one month's notice given to the owner or occupier of the premises from which such materials are intended to be taken, to appear before the justices to show cause why such materials shall not be had ; and such justices may authorise such surveyor to take such materials.

Penalty for taking away Materials.] By sect. 47, if any person, without the consent of the surveyor, takes away materials which have been purchased or gathered for the repair or use of any highway, or materials out of any quarry opened for the purpose of getting materials for any highway, before the surveyor has discontinued working therein for the space of six weeks (unless authorised to get such for their own private use), shall forfeit any sum not exceeding ten pounds.

Pits to be Fenced.] By sect. 55, if any surveyor, by searching for materials, make any pit or hole in lands, common grounds, rivers or brooks as aforesaid, wherein such materials are found, he must cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit continues open, and within three days after such pit is opened, where no materials are found, cause the same to be filled up, levelled and covered with the turf or clod which was dug out of the same ; and where such materials are found, within fourteen days after having dug up sufficient materials in such pit, he is to cause the same to be filled up or sloped down, and fenced off, if required by the owner of the land or ground ; and every surveyor is, within twenty-one days after he has been appointed, to cause all pits then open and not likely to be further useful to be filled up ; and if they are likely to be further useful, he is to secure them by fences, to prevent accidents.

Penalty.] In case the surveyor neglects to fill up such pit he shall forfeit ten shillings for every such default ; and in case such surveyor neglects to fence off such pit for six days after he has received notice from any justice, or from the owner or occupier, or any person having right of common within such common or

waste lands, such surveyor shall forfeit any sum not exceeding ten pounds. *Ibid.*

Penalty for laying Heaps on the Highway.] By sect. 56, if any surveyor cause to be laid any heap of stone or any other thing upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit any sum not exceeding five pounds. Where a contractor for repair of a highway had neglected to fence or light the obstruction, and injury ensued, it was held surveyor was not liable under sect. 56, but was liable to an action. See *Taylor v. Greenhalgh*, L. R. 9 Q. B. 487; 43 L. J. Q. B. 168; and L. R. 1 Q. B. D. 36.

Damage to be made good.] By sect. 57, if any surveyor digs materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines or tin works, or other work, may be damaged or endangered, he shall forfeit any sum not exceeding five pounds, at the discretion of the justices, notwithstanding his liability to any civil action. Any person under disability may renounce claims for damage or materials. Sect. 49.

Extraordinary Traffic.] A highway authority which is liable or has undertaken to repair any highway, may recover any extraordinary expenses which have been incurred by them in repairing such highway by reason of the damage caused by excessive weight passing along the same or extraordinary traffic thereon. Such expenses are recoverable summarily from any person by whose order such weight or traffic has been conducted. Such person may enter into an agreement with such authority for the payment to them of a composition in respect of such weight or traffic. 41 & 42 Vict. c. 77, s. 23. See *Lord Aveland v. Lucas*, L. R. 5 C. P. D. 351; 49 L. J. C. P. D. 643.

SECTION IX.—NUISANCES ON HIGHWAYS.

What is.] Every unauthorised obstruction of a highway to the annoyance of the public is a nuisance, however long the practice may have prevailed. *R. v. Cross*, 3 Camp. 224; *R. v. Russell*, 6 East, 427. And all injuries to a highway, such as digging a ditch or making a hedge across it, laying timber upon it, or doing any act whereby it is rendered less commodious to the public, is a

public nuisance at common law. 1 *Hawk. P. C.* c. 76, s. 48. But the obstruction of a highway by a fair or market is not indictable if there has been an uninterrupted custom for twenty years. *R. v. Smith*, 4 Esp. 109. Nor is darkening a street by building a house higher a public nuisance. *R. v. Webb*, 1 Ld. Raym. 737.

Where an act is done in pursuance of the powers of a statute, so as to affect or injure a highway, it cannot be treated as a nuisance. Thus, if locomotive engines travel on a railway under an Act of Parliament to the annoyance of passengers on an adjoining highway, this is not indictable. *R. v. Pease*, 4 B. & Ad. 30. But where the owner of a colliery, without authority, narrowed the highway by making a railroad close to it, it was held that the facility given by the railroad to general traffic was no answer to the indictment. *R. v. Morris*, 1 B. & Ad. 441. So where a gas company, not empowered by statute, broke up a road by leave of the surveyor, it was held indictable. *Reg. v. Sheffield Gas Consumers' Co.*, 18 Jur. 146, n. See *Reg. v. Scott*, 3 Q. B. 543.

Although an indictment is the appropriate remedy for obstructing a highway, yet if an individual sustains from the obstruction some peculiar injury, besides what he suffers as one of the public, he may bring an action for it. *Wilks v. Hungerford Market Co.*, 2 Bing. N. C. 281; *Rose v. Groves*, 6 Sc. N. R. 645; *Dobson v. Blackmore*, 9 Q. B. 991.

There are several kinds of obstruction to highways provided for by the General Highway Act, 5 & 6 Will. 4, c. 50.

Trees to be cut down.] By sect. 64, no tree, bush or shrub shall be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof, but the same shall be cut down, grubbed up and carried away by the owner or occupier of the land or soil, within twenty-one days after notice by the surveyor, on pain of forfeiting for every neglect the sum of ten shillings.

Lopping Hedges, &c.] By sect. 65, if the surveyor thinks that any carriageway is prejudiced by the shade of any hedges or trees (except trees planted for ornament or for shelter to any house of the owner thereof), any justice may, on the application of the surveyor, summon the owner before the justices at special sessions for the highways, and the question will be determined at the discretion of such justices. And if they order such hedges or trees to be pruned, or obstruction removed, the owner must comply within ten days, or in default forfeit 40s.; and if the order is not

complied with, the surveyor is to cut such hedges and prune such trees, and be reimbursed by the owner.

Under this section the order must show jurisdiction, and that the trees, &c., ordered to be lopped were growing on land next adjoining the highway; and it should also specify the extent to which the lopping is to take place. *Brook v. Jenney*, 2 Q. B. 274; 6 Q. B. 324.

By sect. 66, no person can be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March; and no person can be obliged to cut down any oak trees growing in such highway or in such hedges, except in the months of April, May, or June, or other trees in any other months than December, January, February, or March.

Scouring Ditches, &c.] By sect. 67, the surveyor has power to make and keep open all ditches, watercourses, &c., and also any trunks, tunnels, &c., through any lands adjoining any highway, upon paying the owner for the damage, to be settled as the damages for getting materials. *Peters v. Clarson*, 7 M. & Gr. 548. By the Public Health Act, 1875, the sanitary authority is required to scour, cleanse, and keep clear, as far as may be practicable, all open ditches, gutters, drains, and watercourses upon, adjoining, or by or along the sides of highways.

The foulness of adjoining ditches and overhanging boughs of trees are a nuisance to the highway; and it seems the owner is bound by the common law to cleanse the one and lop the other. Any passenger may lop the boughs to avoid the nuisance. 1 *Hawk. P. C. c. 76, s. 52*; *Bac. Abr. Highway (E.)*.

By the 5 & 6 Will. 4, c. 50, s. 68, if any person in any manner interferes with any such ditches, &c., after they have been taken under the charge of the surveyor, without his consent, such person will be liable to reimburse all expenses which may be occasioned by reinstating the work so interfered with, and forfeit any sum not exceeding three times the amount of such expenses.

Encroachments.] By sect. 69, if any person encroaches, by making any building, hedge, ditch, or other fence, on any carriage-way within fifteen feet from the centre, he forfeits a sum not exceeding 40*s.*; and the surveyor must cause such building, &c., to be taken down at the expense of such person. The surveyor can only remove a building, &c., which is actually placed on the road,

i.e., that part over which carriages do and can pass, and is within fifteen feet of the centre. *Evans v. Oakley*, 1 C. & Kir. 125.

If any person erects any building or fence at side of any turnpike road, so as to reduce its width, or obstructs any ditch, or (if within three miles from a market town) within thirty feet of the centre, or (beyond three miles) twenty-five feet from the centre, or injures the surface, or makes any other encroachment, he forfeits 40s. to the informant, and the trustees may take down or fill up such obstruction or injury at his expense. 28 & 29 Vict. c. 107, s. 2 (incorporating 3 Geo. 4, c. 126, ss. 118, 124). These provisions are continued in relation to any road having been a turnpike which may become a highway. *Ibid.*

If any person encroach by making any building, pit, hedge, ditch, &c., or by placing materials or rubbish on the side of any carriageway within fifteen feet of the centre, or by removing any soil or turf from the side, except for improving the road, or by order of the board, or, where no board, of the surveyor, he is subject to a penalty not exceeding 40s., and the justices may levy the expenses of "restoring the injury" upon the person offending. Where a carriageway is fenced on both sides, no encroachment can be allowed whereby it will be reduced in width to less than thirty feet between the fences. See *Coggins v. Bennett*, L. R. 2 C. P. D. 568; 27 & 28 Vict. c. 101, s. 51.

Erecting Steam Engines, &c.] It is not lawful to sink any shaft or erect any steam engine within twenty-five yards, nor any windmill within fifty yards, from any carriageway, unless within some building, or behind some fence, sufficient to conceal the same from the carriageway, so that the same may not be dangerous to passengers, horses, or cattle; nor to make any fire for burning limestone, bricks, &c., within fifteen yards from any carriageway unless within some building, &c. 5 & 6 Will. 4, c. 50, s. 70.

Locomotives.] The above provision does not prohibit use of steam ploughs if a person be employed to signal when to stop, &c. 28 & 29 Vict. c. 83, s. 6.

Every locomotive used on any turnpike road must consume its own smoke. 41 & 42 Vict. c. 77, ss. 29, 30. See also 24 & 25 Vict. c. 70, s. 12; and 28 & 29 Vict. c. 83, ss. 3, 4; and *Baker on Highways*, p. 78.

Other Nuisances and Obstructions on Highways.] By sect. 72, "if any person wilfully rides upon a footpath or causeway by the

side of any road made or set apart for the use or accommodation of foot passengers ; or wilfully leads or drives any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway ; or tethers any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon ; or causes any injury or damage to be done to the highway, or the hedges, posts, rails, walls, or fences thereof, or wilfully obstructs the passage of any footway ; or wilfully destroys or injures the surface of any highway ; or wilfully or wantonly pulls up, cuts down, removes, or damages the posts, blocks, or stones fixed by the surveyor as herein directed ; or digs or cuts down the banks which are the securities and defence of the highways ; or breaks, damages, or throws down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injures or defaces the same ; or pulls down, destroys, obliterates, or defaces any milestone or post, graduated or direction post or stone, erected upon any highway ; or plays at football or any other game on any part of the said highways, to the annoyance of any passenger or passengers ; or if any hawker, higgler, gipsey, or other person travelling pitches any tent, booth, stall, or stand, or encamps upon any part of any highway ; or if any person makes or assists in making any fire, or wantonly fires off any gun or pistol, or sets fire to or wantonly lets off or throws any squib, rocket, serpent, or other firework whatsoever within fifty feet of the centre of such carriageway or cartway ; or baits or runs for the purpose of baiting any bull upon or near any highway ; or lays any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon ; or suffers any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto ; or in any way wilfully obstructs the free passage of any such highway ; every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby."

Removal of Matters laid on Highway.] By sect. 73, if anything is laid upon any highway so as to be a nuisance, and is not, after notice given by the surveyor, removed, the surveyor may, by order

in writing from any justice, clear the highway by removing and disposing of the same, and apply the proceeds towards the repairs of the highway within the parish in which such highway is situate. If any rubbish so laid is not of sufficient value to defray the expense, the person who deposited such soil must repay to the surveyor the money expended for the removal, the same to be levied as forfeitures are directed to be levied.

Straying of Cattle.] If any horse, &c., is found straying on any highway (except such as pass over common or uninclosed ground), the owner will, for every animal, be liable to a penalty not exceeding 5s., together with expenses of removing such from the highway to the owner or the pound; but no owner is to pay more than 30s. above such expenses, including the charges of the keeper of the pound, and this is not to take away right of pasturage on the sides of a highway. 27 & 28 Vict. c. 101, s. 25; and as to pound breach, see 6 & 7 Vict. c. 30.

SECTION X.—GENERAL REGULATIONS.

Owner's Name to be painted on Carts, &c.] By 5 & 6 Will. 4, c. 50, s. 76, the owner of every waggon, cart, &c., must paint, in one or more straight line or lines, upon some conspicuous part of the right or off-side of his waggon, or upon the off-side shafts, his Christian name and surname, and the place of his trade or abode, in large legible letters in white upon black or black upon white, not less than one inch in height.

Driving more than Two Carts.] By sect. 77, no one person can act as the driver of more than two carts, waggons, or other such carriages, on any highway; but one person may act as the driver of two carts, &c., on any highway, and such carts may pass and travel on a highway, being only under the care and superintendence of such single person; provided such carts, &c., are not drawn by more than one horse each, and that the horse of the hinder cart, &c., is attached by a rein not exceeding four feet in length to the back of the foremost cart, &c.

Other Offences by Drivers, and Penalties.] By sect. 78, if the driver of any waggon, cart, &c., rides upon any such carriage, or upon any horse or horses drawing the same, on any highway, not having some other person on foot or on horseback to guide the same (carts driven with reins excepted); or if the driver, by

negligence, causes any damage to any person, cattle, or goods conveyed or being upon such highway, or quits the same, or is at such distance from such carriage that he cannot have the direction of the horses drawing the same, or leaves any carriage on such highway so as to obstruct the passage ; or if any person drives or acts as the driver of any waggon, &c., not having the owner's name painted thereon, and refuses to tell the true Christian and surname of the owner of such waggon, &c. ; or if the driver of any waggon, horses, or cattle, meeting any other waggon, &c., or horses, &c., does not keep his waggon, &c., or horses, &c., on the left or near side of the road ; or if any person wilfully prevents any other person from passing him, or any waggon, &c., or horses, &c., under his care, upon such highway, or by negligence prevents the free passage of any person, waggon, &c., or horses, &c., or does not keep his waggon, &c., or horses, &c., on the left or near side of the road, for the purpose of allowing such passage ; or if any person riding any horse or beast, or driving any sort of carriage, rides or drives the same furiously, so as to endanger life ; every person so offending in any of the cases aforesaid is, in addition to any civil action, to forfeit any sum not exceeding five pounds, in case such driver is not the owner ; and in case the offender be the owner, not exceeding ten pounds ; and every such driver may be apprehended by any person who sees such offence committed ; and if any such driver refuses to discover his name, the justices may commit him for three months, or proceed against him for the penalty by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name.

The word "driver" includes "rider." *Williams v. Evans*, L. R. 1 Ex. D. 277 ; 35 L. T. 864. A reckless bicycle rider has been held rightly convicted under this section. *Taylor v. Goodwin*, L. R. 4 Q. B. D. 228.

By sect. 4 of 31 & 32 Vict. c. 121, no driver of any waggon or cart is to be liable to any penalty for riding upon such carriage in any turnpike road, if he does not ride upon the shafts, but drives by means of reins.

Where Offenders unknown.] By sect. 79, the surveyor, or any other person witnessing the offence, may seize any unknown person who commits any such offence, and take him before a justice of the peace.

Bye-Laws.] A county authority may make bye-laws for prohibiting or regulating carriage wheels not of such width as may be specified, or having nails, bars, or other projections, or to prevent the roads from being injured by the locking of wheels, and regulating the gates and the use of bicycles. 41 & 42 Vict. c. 97, s. 26.

SECTION XI.—WIDENING, STOPPING, AND DIVERTING.

Width of Cartway and Footway.] By 5 & 6 Will. 4, c. 50, s. 80, the surveyor is required to maintain every public cartway leading to any market town twenty feet wide, and every public horseway eight feet wide, and every public footway by the side of any carriageway three feet at the least, if the ground between the fences will admit. But the surveyor is not required to make or form any public footway without the consent of the vestry.

The surveyor cannot cut banks belonging to a private person, although they may be improved thereby. *Alston v. Scales*, 9 Bing. 3; 2 M. & Sc. 5.

Of Gates.] By sect. 81, if any gate across any public cartway is less than ten feet wide, or any gate across any public horseway is less than five feet wide, clear between the posts thereof, upon notice in writing from the surveyor to the person to whom such gate belongs, requiring him to enlarge the same, if he neglects for the space of twenty-one days to remove or enlarge such gate, he shall forfeit a sum not exceeding ten shillings for every day he so neglects.

Of Railway Bridges.] By the 8 Vict. c. 20, ss. 49, 50, bridges erected for carrying a railway over a road, or a road over a railway, must be of the width of thirty-five feet, in the case of a turnpike road; twenty-five feet, of a public carriage road; and twelve feet, of a private road. But by sect. 51, if the average available width for the passage of carriages be less than the prescribed width, the width of the bridge need not exceed such average available width, provided it is not less, in the case of a turnpike or public carriage road, than twenty feet. See *Att.-Gen. v. London and Southampton Railway Company*, 2 Rail. Ca. 302; *Reg. v. Rigby*, 14 Q. B. 687.

Power of Justices to widen.] By 5 & 6 Will. 4, c. 50, s. 82, two justices are empowered to order a highway to be widened and enlarged in such manner as they think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in

breadth ; and that neither of the said powers extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground, or as a nursery for trees. The justices must state in their order that they have viewed the highway and acted on the view. *R. v. Jones*, 12 A. & E. 684 ; *R. v. Marquis of Downshire*, 4 A. & E. 698. This section applies to ways repairable *ratione tenuræ*. *R. v. Balme*, Cowp. 648.

Compensation to be made.] The surveyor is empowered to make an agreement for recompense for the ground, and for the making such new ditches and fences as shall be necessary, with any person that may be injured by the widening and enlarging such highway, and if the surveyor cannot agree with such person, then the justices at the quarter sessions are to impanel a jury to assess the recompense ; and the ground, after such agreement or verdict, is to be a public highway ; saving to the owner all minerals and timber to be felled within one month, or to be felled by the surveyor and laid upon the land adjoining, for the benefit of the owner ; two justices may direct the surveyor to make a rate for purchasing land to widen and enlarge the highway, and making the ditches and fences, and also satisfaction for damage ; provided that no such rate to be made in any one year shall exceed one-third part of the rate authorised to be levied, in addition to the rate for the repair of the highways. *Ibid.* By sect. 93, these powers are applicable to all highways by whomsoever repairable. The inquiry ought to show upon its face that fourteen days' notice has been given to the owner of the land ; *R. v. Bagshaw*, 7 T. R. 363 ; and should specify the sum to which each party interested is entitled. *R. v. Trustees of Norwich, &c., Roads*, 5 A. & E. 563.

Costs.] By sect. 83, in case the jury give more than was offered by the surveyor, the costs are to be borne and paid by the surveyor ; but if the jury give no more or less than was offered, the costs are to be paid by the person who refused to accept the satisfaction so offered. By 25 & 26 Vict. c. 61, s. 44, all the provisions of 5 & 6 Will. 4, c. 50, as to widening, &c., are to be applicable to highways under local and personal Acts.

Stopping and Diverting.] By sect. 84, when the vestry deem it expedient that any highway be stopped or diverted, the chairman must direct the surveyor to apply to two justices to view the same,

and if any other party is desirous of stopping up or diverting any highway, he is, by a notice in writing, to require the surveyor to submit the wish ; and if the vestry agree to the proposal, the surveyor must apply to the justices.

Certificate of Justices.] By sect. 85, when it appears upon view of two justices that any public highway may be diverted so as to make the same nearer or more commodious to the public, and the owner of the lands or grounds through which such new highway, so proposed to be made, consents thereto by writing under his hand, or if it appears upon such view that any public highway is unnecessary, the said justices are to direct the surveyor to affix a notice at each end of the highway from whence the same is proposed to be turned, diverted, or stopped up, and also to insert the same notice in one newspaper circulated in the county for four weeks, and to affix a like notice on the door of the church of every parish in which such highway so proposed to be diverted, turned, or stopped up, or any part thereof, lies, on four Sundays ; and the justices are to certify that the proposed new highway is more commodious to the public, and if nearer ; and the certificate is to be lodged with the clerk of the peace, and after the expiration of four weeks from the day of the certificate of the justices having been lodged with the clerk of the peace as aforesaid, is to be read by the said clerk of the peace in open court ; and the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, are to be enrolled by the clerk of the peace amongst the records of the quarter sessions. Any person whatever is at liberty, at any time previous to the quarter sessions, to inspect the certificate and plan lodged with the clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan.

Actual inspection by the justices is a necessary condition of their jurisdiction, and it must be stated in their certificate that they were satisfied on the view that the road should be stopped, &c. *R. v. Marquis of Downshire*, 4 A. & E. 721 ; *Reg. v. Jones*, 12 A. & E. 684. They should also state that they viewed it *together*. *R. v. JJ. Cambridgeshire*, 4 A. & E. 111 ; *R. v. JJ. Kent*, 10 B. & C. 477. The certificate must also show upon its face that the requisites of sect. 84 have been complied with, otherwise it cannot be

confirmed on appeal. *Reg. v. JJ. Worcestershire*, 3 E. & B. 447. The consent of the owner of the land through which the new road is proposed to be made must also appear. This means the owner at the time. *R. v. Kirk*, 1 B. & C. 21. Assent under the hand of an agent is insufficient. *R. v. JJ. Kent*, 1 B. & C. 622.

Justices under this section may certify for the diversion, if the new highway is nearer or more commodious, and a certificate is valid which alleges one alternative. *R. v. Phillips*, L. R. 1 Q. B. 648.

Where three roads met, and the justices made a separate certificate as to each being unnecessary, the Queen's Bench quashed the orders of quarter sessions affirming the certificates, on the ground that no notice had been posted at the point of junction; that the actual publication of the notice at each end of the road to be dealt with was a condition precedent to the jurisdiction of the two justices, and as each had been treated as a separate road, the condition had not been fulfilled. *R. v. Surrey JJ.*, L. R. 5 Q. B. 466. *R. v. Midgley*, 12 W. R. 954.

It is sufficient if the certificate state that the old highway *will be* unnecessary when the proposed alterations are completed. *R. v. Phillips, supra*.

Order may include several Highways.] By sect. 86, where it is proposed to stop up or divert more than one highway connected together, it is lawful to include such different highways in one certificate.

Appeal against stopping up Highway.] By sects. 87—90, provisions are made for appeal to the quarter sessions.

Discontinuance of Highways.] See 27 & 28 Vict. c. 101, s. 21; and 41 & 42 Vict. c. 77, s. 24.

Order for Stopping, &c.] By sect. 91, if no appeal is made, or being made is dismissed, the quarter sessions are to make an order to divert and to stop up such highway, and to purchase the ground for a new highway, or to stop up such unnecessary highway. It is the duty of the sessions, even when there is no appeal, to be satisfied that the certificate comes before them correct on its face, and accompanied by plan and proof such as the statute requires. *R. v. Worcestershire JJ.*, 3 E. & B. 490. The order must not delegate to the surveyor a discretion as to the line of new highway. *R. v. Newmarket Rail. Co.*, 19 L. J. M. C. 241.

Repair of new Highway.] By sect. 92, in every case in which a

highway has been turned or diverted under the provisions of this Act, the parish or other party liable to the repair of the old highway is to be liable to the repair of the new highway, without any reference whatever to its parochial locality.

By sect. 93, these powers are applicable to all highways by whomsoever repairable.

By 25 & 26 Vict. c. 61, s. 44, all the provisions of 5 & 6 Will. 4, as to diverting and stopping up highways, are to be applicable to highways under local or personal Acts.

SECTION XII.—BRIDGES.

Repair of.] The obligation to repair public bridges rests by law upon counties, unless they can throw it upon others by prescription or Act of Parliament. 2 *Inst.* 700; *R. v. Kerrison*, 3 M. & Sel. 526. No action will lie against the inhabitants at large, or the county surveyor, at the suit of an individual injured by a county bridge being out of repair; the proper remedy is by indictment or presentment for the public nuisance. *Russell v. Men of Devon*, 2 T. R. 667; *McKinnon v. Penson*, 23 L. J. M. C. 97; 9 Exch. 609. The power of presenting a bridge is not taken away by the 5 & 6 Will. 4, c. 50; *Reg. v. Brecknockshire*, 15 Q. B. 813; *Reg. v. Merionethshire*, 6 Q. B. 343.

A parish, township, corporation or a private individual may be liable to repair a bridge by prescription or *ratione tenuræ*. *Hale P. C.* 143. See *R. v. Kent*, 13 East, 220; *R. v. Lindsey*, 14 East, 317. But the obligation to repair does not carry with it the liability to *widen* the bridge, however the public exigencies may require that it should be widened. *R. v. Devon*, 4 B. & C. 670; overruling *R. v. Cumberland*, 6 T. R. 194; 3 B. & P. 354; *R. v. Surrey*, 2 Camp. 455. If the bridge was originally rendered necessary by an act done by private persons for their own benefit, as where they had cut a drain through a highway and had carried a bridge over the drain, the public user of the bridge is referable to the original act, which was legal only on condition of the persons doing it providing a proper crossing; and such a bridge is not repairable by the county. *Reg. v. Ely*, 15 Q. B. 827; 19 L. J. M. C. 223; *R. v. Lindsey*, 14 East, 317; *R. v. Kerrison*, 3 M. & Sel. 526.

Where townships have enlarged a bridge, which they were before bound to repair as a foot-bridge, they are still liable *pro rata*. *R.*

CHAPTER X.

RATES.

- SECTION I. *Church Rate.*
 II. *County Rate.*
 III. *Borough Rate.*
 IV. *Poor Rates.*
 1. *How authorised.*
 2. *Persons Rateable.*
 3. *In respect of what Property.*
 4. *Appeal against Rate.*
 5. *Levying Poor Rate.*
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SECTION I.—CHURCH RATE.

IN 1868 an Act (31 & 32 Vict. c. 109) was passed for the abolition of compulsory church rates.

By sect. 1, the right to recover church rates by legal process is abolished.

By sect. 2, statutable rates, which under the provisions of the statutes would be applicable partly to church rate purposes and partly to other purposes, are to be applicable to such last named purposes only. Such portions of mixed funds, arising partly from rates affected by the Act and partly from other sources, as are derived from such other sources, are to be primarily applicable to church rate purposes.

By sect. 3 is reserved the right to levy by compulsory rates money due under the provisions of any statute on the security of church rates, and rates in the nature of church rates, or ordered to be raised in the name of church rate under any such provisions, at the time of the passing of the Act.

By sect. 5 is reserved the full effect of enactments in private

and local Acts authorising the making or levying of rates in lieu of tithes, customary payments, or other property previously appropriated by law to "ecclesiastical purposes," or in consideration of the abolition of tithes, or upon any contract made, or for good or valuable consideration.

By sect. 6, the right of vestries, and the right of making, assessing, receiving, and otherwise dealing with church rates, except so far as relates to the recovery of them, is preserved. Every ecclesiastical district with a consecrated church is in effect constituted a separate and independent parish for church rate purposes.

Sect. 7 confers upon bodies corporate, trustees, guardians, and committees, the right to pay the church rate, if they think fit, whether they or their *cestui que trust* be in occupation, and to have the amounts allowed in their accounts.

By sect. 8 no person who makes default in paying the amount of a church rate for which he is rated is entitled to inquire into, or object to, or vote in respect of, the expenditure of the moneys arising from such church rate, and if the occupier of any premises make default for one month after demand in payment of any church rate, the owner may pay the same, and is thereupon entitled, until the next succeeding church rate is made, to stand for all purposes relating to church rates (including the attending at vestries and voting thereat) in the place in which such occupier would have stood.

By sect. 9 trustees may be appointed in any parish for the purpose of accepting, by bequest, donation, contract, or otherwise, and of holding any contributions which may be given to them for ecclesiastical purposes in the parish. The trustees are to consist of the incumbent and of two householders or owners, or occupiers of land in the parish, to be chosen, one by the patron, and the other by the bishop of the diocese in which the parish is situate.

The trustees are to be a body corporate by the name of the church trustees of the parish to which they belong, having a common seal, and with power to sue and be sued in their corporate name.

The trustees may pay over to the churchwardens, to be applied by them either to the general ecclesiastical purposes of the parish, or to any specific ecclesiastical purposes of the parish, any funds in their hands, and the funds so paid are not to be applied to any other purpose ; provided always that no power is thereby conferred on the churchwardens to take order with regard to the ecclesiastical purposes of the parish otherwise than they are now by law entitled

to do ; provided also, that due regard is to be had to the directions of the donors of funds contributed for any special ecclesiastical purposes.

The trustees may invest in Government or real securities any funds in their hands, and accumulate the income thereof, or otherwise deal with such funds as they think expedient, subject to the provisions of the Act.

The incumbent is to be the chairman of the trustees, who are every year to lay before the vestry an account of their receipts and expenditure during the preceding year, and of the mode in which such receipts have been derived and expenditure incurred, together with a statement of the amount of funds in hand.

By sect. 10, "ecclesiastical purposes" are defined to mean the building, rebuilding, enlargement, and repair of any church or chapel, and any purpose to which, by common or ecclesiastical law, a church-rate is applicable, or any of such purposes :

"Church rate" means any rate for ecclesiastical purposes as defined by the Act :

"Parish" means any parish, ecclesiastical district, chapelry, or place within the limits of which any person has the exclusive cure of souls.

The above Act does not make church rates illegal ; nor does it relieve the churchwardens from the duty of repairing the church. The churchwardens were never bound to effect the repairs if they could not procure the necessary funds ; but if they can procure them they are as much bound to effect the repairs now as they were before the passing of the Act, and if they cannot otherwise obtain them it will still be their duty to endeavour to do so by means of a church rate. See *Prideaux's Churchwardens' Guide*, 14th ed. p. 105.

Granting the Rate.] The vestry having been duly assembled, the churchwardens must submit to the vestry for their consideration the question of the proposed repairs, and an estimate of the probable cost necessary for effecting them. The churchwardens are bound to furnish a *probable* estimate of the expenses, and if they neglect to do so the vestry may decline to consider the question of a church rate at all. *R. v. St. Margaret's, Leicester*, 10 A. & E. 730. If the church is out of repair, and a rate be in fact necessary, it is the duty of the vestry to grant one. *Gosling v. Veley and another*, 4 H. of L. Cas. 679.

Making the Assessment.] When the rate is granted, the parishioners must be assessed according to their several rateable properties. It is not necessary that this should be done in vestry. The resolution of the vestry that the rate shall be made is the foundation of the rate, and the churchwardens may subsequently, of their own authority, assess the rate in pursuance of such resolution. *White v. Beard*, 2 Curt. 480.

When a church rate is made, all that occupy any lands or houses within the parish are to be laid to it, according to the value of the said lands or houses, by an equal pound rate, and not according to the quantity of the land. *Wood's Inst.*, t. 1, c. 7.

The rectory or vicarage is not chargeable to the repairs to the body of the church, steeple, or ornaments, the minister being at the whole charge of repairing the chancel. *Degge's P. C.*, p. 1, c. 12. Property in the occupation of the Crown, directly or indirectly, is exempt from church rates. The rate having been granted by the vestry, and the assessment duly made, the churchwardens should apply to the ordinary for a *faculty* confirming the rate.

See further as to church rates, *post*, POOR RATES, and *Prideaux's Churchwardens' Guide*.

SECTION II.—COUNTY RATE.

Origin of.] There are various expenses to which parishes, as integral portions of counties, are liable, for which it was the custom formerly to make separate rates, but the great inconvenience of making distinct rates for these purposes induced the Legislature by the 12 Geo. 2, c. 29, to provide that one general fund for the whole should be raised, called the county rate, under the direction of the county magistrates. See *Bates v. Winstanley*, 4 M. & Sel. 437.

Since then many statutes have been passed by which the money required for carrying their purpose into effect is to be raised under the general county rate.

How raised.] All the former statutes relating to the assessment and collection of the county rate have been repealed by the 15 & 16 Vict. c. 81, the principal provisions of which are as follows:—

Committee to prepare Basis.] The quarter sessions of every county are from time to time to appoint any number of justices, not exceeding eleven nor less than five, to be a committee for the purpose of preparing a basis or standard for fair and equal county

rates, which is to be founded and prepared rateably and equally according to the full and fair annual value of the property, &c., rateable to the relief of the poor in every parish, &c., or place, parochial or extra-parochial, within the limits of the said justices' commissions, or which in any place within such limits, not maintaining its own poor, would be liable to be so rated if such place were a parish, or of altering such basis from time to time. If the county contain more than eleven petty sessional divisions, the committee may be extended to an equal number. 15 & 16 Vict. c. 81, s. 2. By 29 & 30 Vict. c. 78, s. 1, nothing contained in the Union Assessment Committee Act, 1862, shall apply to any assessment made by any committee under 15 & 16 Vict. c. 81.

Overseers, &c., to make Returns.] For the purpose of preparing such basis or standard the committee may, by order in writing signed by their clerk, direct the overseers, constables, assessors and collectors of public rates for any parish, &c., and all others having the custody or management of any public or parochial rates or valuations of such parish, &c., to make returns of the full and fair annual value [*i.e.*, the net annual value, as required to be estimated in assessing the poor rate—sect. 6] of the whole or any part of the property within the parish, &c., liable to be assessed to the county rate, with the date of the last valuation for the assessment of such parish, &c., and the name of the surveyor or other person by whom it was made. The overseers, &c., are to lay these returns before the vestry or other meeting of the inhabitants at which the public business of the place is commonly transacted, before presenting them to the committee. Sect. 5.

Rates, &c., may be inspected.] The committee may require the said overseers, &c., to produce all parochial rates and documents relating to the value or assessment of property in the several parishes, &c., and to be examined on oath touching such rates, &c.; sect. 7; and they may direct that the whole or any part of a parish, &c., be valued, and may appoint valuers. Sect. 9. If the parish officers neglect to make returns, or make false returns, the expense of ascertaining the annual value is to be paid by the parish, &c. Sect. 10. Where the committee have directed a valuation, and the basis is confirmed, or not reduced below the sum set forth in the return, the cost is to be paid by the parish. Sect. 11.

They cannot require the production of documents relating to the

assessment of the income tax or concerns in the nature of trade. 26 & 27 Vict. c. 33, s. 22.

Basis to be printed.] If the committee have prepared the basis, in which the total annual value of the property in any parish, &c., is estimated at a greater or less amount than in the preceding basis, they are to cause it to be printed and copies to be sent to every acting justice, and to the overseers, constables and other persons charged with the collection or levy of the county rate in every parish, &c.; and such overseers, &c., are, within twenty-one days, to call a vestry meeting and submit such copy to it. Sect. 13. The committee are also to send to the overseers, &c., a notification of a time, not less than one calendar month after the date, within which objections may be made to the proposed basis, and of a time and place for considering them, and hearing the parties objecting. Sect. 14.

Basis to be confirmed by Quarter Sessions.] When the proposed basis has been finally corrected and approved by the committee, they are to lay it before the next general or quarter sessions, which is to order notice to be given in a newspaper (*Swansea Dock Co. v. Levien*, 20 L. J. Ex. 447) that it will be taken into consideration at the then next quarter sessions; at which sessions it is to be taken into consideration, and altered, or allowed and confirmed, or referred back to the committee and adjourned to a future sessions, at which any amendment or alteration by the committee is to be considered, and (after fourteen days' notice to every parish and place in respect to which such alteration is made) allowed or confirmed. Sect. 15. The basis so confirmed by the quarter sessions is to be valid, notwithstanding any irregularity, and is to be the basis and proportion in which all assessments are thereafter to be made. Sect. 16.

Appeal against Basis.] After the basis has been confirmed, any overseer, &c., or inhabitant of a parish, &c., who has reason to think such parish, &c., is aggrieved by such basis, whether on account of other parishes, &c., being omitted or rated too low, or of such parish, &c., being rated too high, may appeal to the next quarter sessions after the confirmation against such part only of the basis as affects the parishes overrated, or underrated or omitted. If the appeal is on the ground of another parish being underrated or omitted, twenty-one days' notice in writing of the intention to appeal and the cause and matter thereof is to be given to the over-

seers, &c., of such other parish, &c. If the appeal is on the ground that the appellant parish is overrated, a like notice is to be given to the clerk of the peace. The sessions are either to confirm the parts of the basis appealed against, or to correct inequalities or omissions therein; but the basis is not to be quashed as to any other parish, &c., unless the major part of the justices present deem it necessary to proceed to make an entire new basis. Sect. 17. Instead of hearing the appeal, the sessions may adjourn it, and order, on the application of the appellant or respondent, a survey and valuation of any parishes, &c., in respect of which the appeal is made, and fix a subsequent session for receiving, and appoint a proper person to make, such survey and valuation. Such survey and valuation is to be reported to the session fixed for receiving it, and the court then and there assembled are to hear and determine the appeal. Sect. 18. Costs of the appeal and valuation may be given. Sect. 19.

Revising Basis.] Although there be no appeal, the committee may, if required by the quarter sessions, from time to time revise the basis, to meet partial changes which may have occurred in the rateable value of property, in which case they are to proceed as in settling the basis, and to give notice to any parish as to which an alteration is proposed to be made. Sect. 20.

By 32 & 33 Vict. c. 67, s. 77, the above provisions are not to apply to the preparation of a basis or standard of county rate for any part of the metropolis, as defined by that Act.

Sessions to make Rate.] The justices of the several counties or divisions at general or quarter sessions, or any adjournment thereof, may, whenever circumstances appear to require it, order a fair and equal county rate to be made for all purposes to which such rate is liable, according to the basis in force for the time being; and may assess every parish, &c., within the limits of their commissions, rateably and equally according to a pound rate to be fixed by such justices, upon the said basis, upon the full annual value of the property, &c., rateable to the relief of the poor. Sect. 21. See 20 Vict. c. 19. Where an Act provides that a canal company shall be rated to all parliamentary and parochial taxes and assessments for its lands, &c., in the same proportion as other lands, &c., lying near, and as if their lands were the property of individuals in their natural capacity, the county rate is to be assessed on those lands at the reduced estimate. *Reg. v. Aylesbury-with-Walton*, 9 Q. B. 261.

Appeal against Rate.] The churchwardens, overseers, or other inhabitants of any parish, &c., where there is no churchwarden, &c., may appeal to the next quarter sessions against such part of the rate as affects their parishes, on account of the proportions assessed on the respective parishes being unequal, or of some of them being omitted or underrated, or of the appellant parish being overrated, or of the altered state of the value of the property assessed. Fourteen clear days' notice in writing is to be given to the parties against whose rate the appeal is, and to the clerk of the peace, and the hundred constable, of the grounds of appeal and of the intention to try it. The sessions are either to confirm the rate, or correct such inequalities, &c., as exist therein, as well in respect of the basis as of the rate made thereon. But no rate is to be quashed on appeal in regard to any other parish, &c., unless the sessions make an entire new rate. Sect. 22. It is no ground of appeal that individuals in one parish are rated in a higher proportion than those in another. *R. v. Blackawton*, 10 B. & C. 792. As to the inequality of the proportions assessed on different parishes, see *ibid.*, and *R. v. JJ. York*, 2 B. & C. 771.

The rate is to continue to be raised, notwithstanding an appeal against it, until the appeal is decided; and any sums overpaid by parishes are to be refunded out of the general rate. Sect. 23. The costs of appeals are to be borne by the parishes as the sessions order. Sect. 24.

Guardians to pay Rate.] The sessions are to send a printed list of the parishes, &c., assessed to the rate, and the rateable value upon which each is assessed, to the overseers, constables, or others charged with the collection of the county rate (but by 29 & 30 Vict. c. 78, s. 2, the printed lists are, unless the justices otherwise direct, to be sent only on the occasion when a new basis or a standard for a county rate, or an alteration in the existing basis or standard, has been allowed or confirmed), and to send precepts to the guardians of unions or single parishes, stating the sum assessed for each rate on each parish in the union, and requiring them to cause the aggregate of such sums to be paid out of the money held on behalf of each parish to the county treasurer; the guardians are to raise the money in the same manner as poor rates, and to pay it as required by the precepts. Sect. 26.

When payable by Overseers.] If the guardians fail to pay the sum required to be paid on behalf of any parish, the sessions may

issue warrants to the overseers, or petty constable, or peace officer of such parish, to collect and pay to the county treasurer the rates charged on such parish, with the addition of 10 per cent. to be applied in the same manner as the county rate; and such constables, &c., may reimburse themselves such additional sums, as well as the original rate, out of the moneys which they are empowered to levy for the county rate, but are to receive no compensation for their trouble or expense. Sect. 27. If the overseers, &c., fail to pay, the justices may levy the rate by distress and sale of their goods. Sect. 28. Parishes not in arrear with contributions, whose moneys have been applied by the guardians to the use of other parishes, are to be reimbursed by such other parishes the 10 per cent. and all costs. Sect. 29.

In any parish not within an union, and in which the laws for the relief of the poor are not administered by guardians; and in any parish within an union, the guardians of which are not empowered to relieve the poor; and, in either of such cases, when a part only of the parish is within the commission of the justices, for which no separate poor rate is levied, or where there are no separate churchwardens or overseers, or no separate poor rate is made for any division of a parish, &c., extending into two or more counties; and in every place not maintaining its own poor, but liable to county rates, the sessions, as soon as a vacancy occurs in the office of high constable, may issue warrants to the overseers, &c., of such place, &c., to pay to the county treasurer the county rate charged on them without the intervention of the high constable; if they neglect to pay, the same remedy is provided as in sect. 28. Sect. 30. All the powers of this Act are to extend to places not having separate churchwardens, &c., or where no separate poor rate is made for any place extending into two counties. Sect. 31.

The overseers of parishes situated partly within and partly without boroughs not liable to contribute to the county rate are to collect the county rate leviable on the part not included in the borough by a separate rate on that part. Sect. 32. Any person assessed to the rate in such case may appeal in the like manner as against a poor rate. The moneys collected are to be accounted for, and the accounts audited, as in case of the poor rate. Sect. 33.

By 29 & 30 Vict. c. 113, s. 13, the provisions of sect. 10 of 13 & 14 Vict. c. 101 are extended to the county rate, or other rate in the nature of a county rate, levied upon the part of the parish

therein described situated without the borough, and the auditor is to have the same power to allow or disallow accounts audited by him under the provisions of sect. 3 of 12 & 13 Vict. c. 65, and of sect. 33 of 15 & 16 Vict. c. 81, and to surcharge, certify, and recover all such sums as he shall find due from the persons accounting or authorising or making any payment, with the same right of appeal to any person aggrieved by his decision, as in the case of the poor rate.

Extent of Act.] The word "county" includes any riding or division having a separate commission of the peace or county treasurer, and any liberty, franchise or other place in which rates in the nature of county rates may be levied having a separate commission of the peace, and not subject to the jurisdiction of the county at large in which it lies, nor contributing or paying to the county rate made for such county at large. Sect. 51.

In any county having one commission of the peace, and being divided into separate divisions, having each a separate county treasurer, the provisions of the Act apply to the whole of such county generally and not to separate divisions thereof particularly. 21 & 22 Vict. c. 33. Justices of divisions are to raise all county rates and to administer all disbursements thereout in such divisions as theretofore. *Ibid.*

By the 12 & 13 Vict. c. 82, boroughs having separate quarter sessions are in certain cases relieved from contributing to county rates for the expenses of gaols, houses of correction and lunatic asylums. See as to boroughs not having separate quarter sessions, *Reg. v. JJ. Wilts*, 11 Q. B. 758.

Retrospective Rate.] The justices have no right, except under particular Acts of Parliament, to make a county rate to provide for a past debt, although it has been incurred for county purposes, so as to make the expense fall on different persons from those liable when the debt was incurred. *R. v. JJ. Flintshire*, 5 B. & Ald. 761. See *Cortis v. Kent Waterworks Co.*, 7 B. & C. 314; *Reg. v. Saunders*, 3 E. & B. 763. But if a fine be imposed on a county which the sessions think illegal, they may order the expense of litigating the question to be defrayed out of the county stock, or the expense of litigating questions between two counties, as to the repair of bridges, &c., or the purchase of land adjoining such bridges. *R. v. Essex*, 4 T. R. 591. But they cannot order the costs of a prosecution for a misdemeanour, carried on under the

direction of the magistrates, to be allowed out of the county rate. *R. v. W. R. Yorkshire*, 7 T. R. 377.

Borrowing on Security of Rate.] By 38 & 39 Vict. c. 89, s. 40, the justices of any county, &c., in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate, or any increase of a county rate, for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners.

SECTION III.—BOROUGH RATE.

In Boroughs under the Municipal Act.] By 5 & 6 Will. 4, c. 76, s. 92, the annual proceeds of all the corporate property, and all fines and penalties for offences against the Act, are to be carried to the "borough fund;" and if that fund be insufficient for the purposes to which it is applicable, the council are to estimate the additional amount required, and to make a borough rate in the nature of a county rate, for which purpose they have all the powers of county justices in sessions. The warrants are to be signed by the mayor, and sealed with the seal of the borough. The rate must not be retrospective. *Jones v. Johnson*, 5 Exch. 862; 7 Exch. 452; *Att.-Gen. v. Lichfield*, 11 Beav. 120.

When paid out of Poor Rate.] By 1 Vict. c. 81, s. 1, the council may order the churchwardens and overseers to pay the amount of the rate for which a parish is liable out of the poor rate, or to make and collect a pound rate for the amount; and on refusal or neglect to do so, the amount may be levied on their goods by distress, by warrant under the hand and seal of the mayor or any two justices for the borough; and if any person refuse to pay the said pound rate, the amount may be levied on his goods in the same manner.

Divided Parish.] By 1 Vict. c. 78, s. 29, the overseers of a parish, &c., of which part only is within the borough, are to levy the sum required for the borough rate within that part exclusively. By 1 Vict. c. 81, s. 3, in the case of a parish, &c., so divided, or of an extra-parochial place, the council are to appoint an overseer for

that part which is within the borough, or for that place, to make and levy the rate. If the borough be not liable to the county rate, the justices are to appoint an overseer for the part of the divided parish which is not within the borough, to make and levy the county rate therein; and the persons so appointed have all the powers of overseers of the poor. See *Reg. v. New Windsor*, 7 Q. B. 908; *Cobb v. Allan*, 10 Q. B. 683. By the 8 & 9 Vict. c. 110, s. 1, the overseers so appointed for the parts of parishes within boroughs are empowered to lay district rates for the purpose of raising the sums assessed upon such parts. See 12 & 13 Vict. c. 65.

Watch Rate.] By 2 & 3 Vict. c. 28, the council of any borough may levy a watch rate upon the occupiers in those parts of the borough which are watched by day and night, and which from time to time are declared liable to a watch rate by an order of the council; every such rate to be made upon the net annual value of the hereditaments rated; that is to say, the rent at which they might be reasonably expected to let from year to year, the probable average annual cost of repairs, insurances, and other expenses necessary to maintain them in their present state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charges, being paid by the tenant. Sect. 1. But this does not apply to any borough in which the borough fund is sufficient, with the aid of the amount only of watch rate which could be raised under the 5 & 6 Will. 4, c. 76, and without the aid of any borough rate, to defray the expense of the constabulary force of the borough, together with all the other expenses legally payable out of the borough fund. 3 & 4 Vict. c. 28, s. 1. The amount of watch rate is made discretionary with the council, but is not to exceed 8d. in the pound in any one year. 22 & 23 Vict. c. 31, s. 6.

In other Boroughs.] By the 17 & 18 Vict. c. 71, the justices in any borough not being within the Municipal Corporation Act, and not being liable to contribute to the county rate, may make a borough rate, in the nature of a county rate, for defraying any expenses incurred for all or any of the purposes defined in the Municipal Corporations Act, 1835, as purposes for which a borough rate may be levied; and they and all persons acting under their authority are to have within the borough all powers and protection given to justices by the 55 Geo. 3, c. 51, and to town councils by any Acts relating to the making of borough rates. The appeal

declaration required by 6 & 7 Will. 4, c. 96, s. 2, the overseers are, before the rate is allowed by the justices, to sign a declaration in the form set out in the schedule. But where by reason of any alteration in the occupation of any property included in such list, such property has become liable to be rated in parts not mentioned in such list as rateable hereditaments, and separately rated therein, such parts may, where a supplemental valuation list showing the annual rateable value of such parts has not been approved and delivered as required, and whether such list has or has not been made, be rated according to such amounts as shall be fair apportioned parts of the annual rateable value appearing in such valuation list so in force of the hereditaments out of which such parts have been constituted. Sect. 28.

In every parish after such valuation list has been so approved and delivered, every poor rate shall show the annual rateable value of each hereditament comprised therein, according to the valuation list in force in such parish. Sect. 43.

The overseers when they make a poor rate are to set forth in the title of the rate the period for which the same is estimated, and if the rate is payable by instalments, the amount of each instalment and the date at which each instalment is payable. 32 & 33 Vict. c. 41, s. 14.

By an order of the Local Government Board of January 14, 1867, the several columns of the rate book containing the rateable value and the rate in the pound assessed are to be added up at the foot of every page, and the general total set forth at the foot of the rate before it is presented to the justices for allowance. And a power is given to divide the rate into portions corresponding with the divisions of a parish; and to bring together under one number all or any of the properties belonging to the same person, where owners are assessed instead of occupiers. The order provides for the keeping of parochial accounts by the overseers.

Allowance of.] The 43 Eliz. requires the consent of two or more justices, dwelling in or near the parish, &c., whereof one is to be of the quorum, which is called "their allowance." In this they act ministerially merely, and have no discretion to refuse the allowance, though they may think the rate improperly made. *R. v. JJ. Dorchester*, 1 Stra. 393. They may be compelled by *mandamus* to allow the rate. *R. v. Edwards*, 1 Bla. Rep. 637; *R. v. Lord Godolphin*, 1 Dowl. & L. 830. Before the rate is allowed by the

justices a declaration must be signed by the overseers that the rate is in conformity with the valuation list in the form given in the schedule to 25 & 26 Vict. c. 103, s. 28. See *Re Justices of North Staffordshire*, 23 L. J. M. C. 17. A poor rate is deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance, then on the day of the last allowance. 32 & 33 Vict. c. 41, s. 17.

Alteration of Rate.] After the rate has been thus allowed, it should not be altered by inserting the names of others, even with the magistrates' approbation. *R. v. Barrat*, 2 Doug. 465. But by 54 Geo. 3, c. 170, s. 11, two or more justices in petty sessions may, upon application, and with the consent of the overseers or other parish officers, and on proof of the party's inability from poverty to pay such rate, excuse the payment, and strike out the name of such party from the rate.

Value on which made.] The poor rate is at the present day imposed in respect of the value of the *occupation* of the rateable subject, and not the value of the rateable subject itself. In order to estimate the value of the occupation, it is enacted by 6 & 7 Will. 4, c. 96, s. 1, that no rate for the relief of the poor shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might be reasonably expected to let from year to year, free of all the usual tenants' rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable annual average cost of the repairs, insurance and other expenses (if any) necessary to maintain them in a state to command such rent; provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable.

Compounding for.] By sect. 2, this Act is not to prevent the owners of tenements from compounding for rates, in such manner as they were by any statute enabled to do before the passing of it, so that the gross estimated rental of the hereditaments compounded for be entered on the rate in the proper column.

Survey for new Valuation.] By sect. 3, the Local Government Board, upon a representation in writing from the guardians of any union or parish under their common seal, or from the majority of the churchwardens and overseers, or other officers competent to the

making and levying the rate, that a fair and correct estimate cannot be made without a new valuation, may order a survey to be made of the messuages, lands and other hereditaments liable to poor rates in such parish, or in all or any of the parishes of such union, and a valuation to be made of the said messuages, &c., according to their annual value. But it seems the parish officers are not bound by this valuation, even where there has been no subsequent alteration in value. See *R. v. Bangor*, 16 L. J. M. C. 58; *R. v. Hurstborne Tarrant*, 27 L. J. M. C. 214; 31 L. T. 115.

By the 11 & 12 Vict. c. 110, s. 7, the guardians of an union may, on the application of the majority of the overseers of any parish comprised in it, or of any person assessed to the poor rate, cause a new valuation to be made of part only of the rateable property in the parish, and charge the expense to the overseers or the party applying. These provisions apply to the guardians of a parish not comprised in any union. 31 & 32 Vict. c. 122, s. 28.

Rate must be equal.] All persons must be rated on the same scale. If any one be rated on a comparatively higher scale than others, he may appeal. Where lands were charged at one-half the rental, and personal estate only at one-fortieth part of the interest of it, the court quashed the rate as being unequal on the face of it. *R. v. Lackenham*, 1 Bott, 105. But the inequality must be manifest, or the court will presume the rate to be equal; and they will not presume it to be unequal because lands and houses are rated differently. *R. v. Brograve*, 4 Burr. 2491; *R. v. Butler*, Cald. 93; *R. v. Tomlinson*, 9 B. & C. 163. The proportion must ever depend upon local circumstances. *R. v. Sandwich*, 2 Dougl. 562.

Period for which made.] A standing rate cannot be made, it must be varied as circumstances change. *R. v. Audly*, 2 Salk. 526. A rate must not be retrospective. *R. v. Goodcheap*, 6 T. R. 159. There cannot be two rates in force for the same period. *Reg. v. Fordham*, 11 A. & E. 73. When the overseers make a rate they are to set forth in the title of the rate the period for which the same is estimated, and if the same is payable by instalments the amount of each instalment. 32 & 33 Vict. c. 41, s. 14.

Publication of.] The 17 Geo. 2, c. 3, s. 1, requires that the overseers, &c., shall give public notice of the rate on the *next Sunday* after it has been allowed by the justices, otherwise it is null and void. This is done by affixing the notice, previously to divine service, on or near to the principal doors of all the churches and

chapels within the parish or place for which it is made. 7 Will. 4 & 1 Vict. c. 45, s. 2. Publication by affixing a notice upon the church door previously to the evening service is sufficient. *Burnley v. Methley*, 28 L. J. M. C. 152. See *Ormerod v. Chadwick*, 16 M. & W. 367; *Reg. v. Marriott*, 12 A. & E. 779. If notice is not given on the next Sunday, it is a radical defect in the rate itself, which is therefore a nullity. *R. v. Newcomb*, 4 T. R. 368; *Sibbald v. Roderick*, 11 A. & E. 38; *Fox v. Davies*, 6 Com. B. 11.

The notice need not show *how* the rate was allowed. *Paynter v. Reg.*, 10 Q. B. 908. After a rate has been allowed and published it cannot be abandoned, so as to prevent its being an existent rate, though the parish officers may decline to support it on appeal. *Reg. v. Fouch*, 2 Q. B. 308. The production of the book containing a poor rate, with the allowance of the rate by the justices, is, if the rate is made in the form prescribed by law, *prima facie* evidence of the due making and publication of such rate. 32 & 33 Vict. c. 41, s. 18.

Demand of Inspection.] The 17 Geo. 2, c. 3, s. 2, enacts that the overseers shall permit inhabitants of the parish to inspect the rates at all seasonable times; and by sect. 3, if any overseer does not permit an inhabitant to inspect the rate, he is to forfeit for every such offence to the party aggrieved 20*l*. An overseer or assistant overseer duly appointed is liable to this penalty if, on demand, he refuses to produce a rate in his custody. *Bennett v. Edwards*, 8 B. & C. 702. But a clerk appointed under a local Act to take care of rate-books, &c., is not within the Act. *Whitchurch v. Chapman*, 3 B. & Ad. 691. The persons entitled to demand inspection under this Act are the inhabitants, as distinguished from the parish officers; therefore, a churchwarden cannot sue an overseer for refusing to produce the rate-book to him. *Wethered v. Calcutt*, 4 M. & Gr. 566; *Tennant v. Bell*, 9 Q. B. 684. A *mandamus* does not lie to inspect a poor rate under this section. *R. v. St. Marylebone*, 5 A. & E. 268.

By 6 & 7 Will. 4, c. 96, s. 5, any person rated may, at all reasonable times, take copies of or extracts from the rate without paying anything for the same; and in case the person having the custody of such rate refuses to permit such person so rated to take copies thereof, or extracts therefrom, the person so refusing, or not permitting such copies to be made, is to forfeit any sum not exceeding five pounds, to be recovered in a summary way before any

justice having jurisdiction in the parish or place. This does not prevent an overseer being liable to the penalty under the former Act. *Tennant v. Cranston*, 8 Q. B. 707.

Rate in Aid.] By 43 Eliz. c. 2, s. 2, if the said justices perceive that the inhabitants of any parish are not able to raise sufficient for the relief of their poor, they may assess any other of other parishes, or out of any parish, within the hundred, or if the hundred is too poor, the justices at their quarter sessions are to assess any other of other parishes, or out of any parish, within the same *county*, in such sums as they think fit. This rate may be made on particular persons only, or on the whole parish. *R. v. Knightley*, Comb. 309; *Anon.*, 1 Vent. 350; *R. v. Boroughfen*, Foley, 29.

If the parish rated in aid be within the same hundred, the rate must be made by two justices out of sessions, and not by the quarter sessions. *Re Dimchurch*, 2 Salk. 480. The order must show that the parishes are in the same hundred. *Boroughfen v. St. John's*, Foley, 27; *R. v. Milland*, 1 Burr. 576. If the parishes be not in the same hundred, but in the same county, the order must be made by the quarter sessions, and it is not necessary for such order to show that two justices have adjudged the inability of the hundred. *R. v. Percivall*, 1 Stra. 56. County justices cannot make a rate in aid of a parish in a borough having exclusive jurisdiction. *R. v. Holbeche*, 4 T. R. 778. In a city or borough which is a county of itself and not within a hundred, it seems doubtful who ought to make a rate in aid. The Recorder, who is sole judge at quarter sessions, appears to be expressly prohibited by the 6 & 7 Will. 4, c. 105, s. 8.

The justices must themselves assess the rate. *St. Peter and St. Paul, Marlborough*, 2 Stra. 1114. And an order, "as long as we the said justices shall think proper," is bad; *R. v. St. Mary, Marlborough*, 1 Stra. 700; but a sum in gross for a year is good; *R. v. Knightley*, Comb. 309; or to raise the sum of 60*l.*; *St. Peter and St. Paul, Marlborough*, 2 Stra. 1114; but if the rate be to levy a certain sum in the pound, it is bad. *R. v. Telscombe*, 1 Stra. 314.

Purposes of.] A poor rate may be made not only for purposes connected with the relief of the poor, but for purposes unconnected with such relief, as shown by the following list, viz.:—

Payments towards the county, borough, or police rates.

Payments by overseers to highway boards under 27 & 28 Vict. c. 101, s. 33.

Contributions by the overseers to the rural sanitary authority for general expenses (if any).

Contributions by the overseers to the School Board (if any).

School attendance committee expenses (if any).

Payments on account of the Registration Act.

Vaccination fees.

Expenses allowed in respect of parliamentary or municipal registration, and costs of jury lists.

Costs of law proceedings (11 & 12 Vict. c. 91, s. 2).

As to charging on the poor rates the expense of making a valuation list, see 25 & 26 Vict. c. 103, s. 39; and *R. v. Richmond*, 34 L. J. M. C. 186.

2. *Persons Rateable.*

The poor rate is to be made "by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes impropriate, or propriations of tithes, or coal mines in the parish." 43 Eliz. c. 2, s. 1.

By 37 & 38 Vict. c. 54, s. 11, the Act of Elizabeth is extended to (1) land used for a plantation or a wood, or for the growth of saleable underwood, and not subject to any rights of common; (2) to rights of fowling, of shooting, of taking or killing game and rabbits, and of fishing when severed from the occupation of the land; and (3) to mines of every kind.

Ambassador, or his Servant.] A rate on a foreign ambassador cannot be levied by distress, nor can any of his suite be rated, if they be clearly within the meaning of the stat. 7 Anne, c. 12. *Novello v. Toogood*, 1 B. & C. 554.

Parson and Vicar.] The parson and vicar, whether resident in the parish or not, are liable to be rated for their tithes in the parish, *R. v. Turner*, 1 Stra. 77; *Reg. v. Capel*, 12 A. & E. 382; although they let them to their parishioners respectively. *R. v. Bartlett*, 16 Vin. Abr. 427. For the parishioner cannot be said to be the occupier, the letting being in the nature of an agreement that the parishioner shall retain the tithe and pay the parson a modus, in which case the parson is still deemed the occupier and rateable; and it is the same with respect to oblations and other offerings. *R. v. Carlyon*, 3 T. R. 385. They are also liable to be rated for other property in their occupation in the same manner as other persons. But if they let their tithes to a tithe farmer, the farmer only can be rated for them. *R. v. Lambeth*, 1 Stra. 525. See *post*, p. 290.

Occupier.] The word occupation implies possession. Per Law-

rence, J., *R. v. Watson*, 5 East, 485. And, therefore, the tenant, and not the landlord, is the occupier within the meaning of the statute; *R. v. Parrot*, 5 T. R. 593; provided the tenant has the legal right to occupy. But where the demise does not operate, as if tolls be let by parol instead of by deed, which is a nullity, the owner and not the lessee is rateable. *R. v. Marquis of Salisbury*, 8 A. & E. 716. So, where the landlord receives a portion of the land itself, as ore in kind, instead of rent, he is rateable. *R. v. St. Agnes*, 3 T. R. 480; *R. v. St. Austell*, 5 B. & Ald. 693; *Reg. v. Crease*, 11 A. & E. 677. But where the owner occupies by his servants he is rateable, for actual residence is not essential to occupancy; *R. v. Aberystwith*, 10 East, 354; and the actual occupation of any portion will make him rateable for the whole. Thus, where a man hired a house, but resided elsewhere, keeping only some corn for his horse and some garden tools therein, but occasionally came there for an hour or two, and allowed a man and his wife to live in the kitchen, which did not communicate with the rest of the house, he was held rateable for the whole. *R. v. St. Mary, Durham*, 4 T. R. 477. But where a landlord occupies a coal mine, and lets the surface to another, these are distinct subjects of occupation, for which each is separately rateable. *R. v. Wellbank*, 4 M. & Sel. 222. See *R. v. Mayor of London*, 4 T. R. 21; *Reg. v. St. Martin-in-the-Fields*, 3 Q. B. 204. If a landlord puts a man into a vacant farm to take care of it, he is not rateable as an occupier, since it does not follow that the landlord becomes occupier when the tenant ceases to be so. *R. v. Morgan*, 2 A. & E. 618, n. If a building is let out in chambers, each occupier is separately rateable. *R. v. St. George's Union*, L. R. 7 Q. B. 90; 41 L. J. M. C. 30.

Servant.] A person occupying merely as a servant is not to be rated, *R. v. Terrott*, 3 East, 506; even though the occupation be treated as part of the wages. *R. v. Field*, 5 T. R. 587. But if a house be given to a servant upon such terms that he has the exclusive occupation of it, he will be rateable, even though his master is bound to pay the rent, taxes and rates. *Reg. v. Wall Lynn*, 8 A. & E. 379; *R. v. Gardner*, Cowp. 79. See *Smith v. Seghill*, L. R. 10 Q. B. 422; 44 L. J. M. C. 114.

Occupation must be exclusive.] The occupier is not rateable unless he has some exclusive interest in the land. See *Roads v. Overseers of Framlington*, L. R. 6 Q. B. 56; 40 L. J. M. C. 35; *R. v. Smith*, 30 L. J. M. C. 34; *Watkins v. Gravesend*, L. R. 3 Q. B. 350; 37 L. J. M. C. 77; *Cory v. Bristow*, L. R. 2 App.

Cas. 262; 46 L. J. M. C. 273; *Mogg v. Overseers of Gatton*, 29 W. R. 74.

Beneficial Occupation.] To render parties liable to be rated as occupiers they must have an occupation beneficial in its nature, that is, capable of yielding a profit to the occupier. It is not necessary that the occupation should be beneficial to the person in occupation, if the property be capable of yielding a clear rent over and above the necessary outgoings. *Mersey Case*, 11 H. L. 433; 35 L. J. M. C. 1.

Charitable Institutions.] By the decision of the House of Lords in the case of *Mayor, &c. of London as Governors of St. Thomas's Hospital v. Stratton*, L. R. 7 H. L. 477; 45 L. J. M. C. 23, charitable institutions are no longer exempt from rating. In that case it was held that the principle laid down in the *Mersey Dock cases*, 11 H. L. C. 443; 35 L. J. M. C. 1; and *Greig v. University of Edinburgh*, L. R. 1 H. L. 348; was applicable to such institutions, and that the occupier is rateable where the property produces a rent over and above the outgoings, though not directly beneficial to the person in occupation.

Court Houses, &c.] Where county courts and judges' lodgings were erected under an Act of Parliament and vested in the justices, as trustees for public purposes only, the lodgings being used by the judges during the assizes and by the justices during the sessions, and containing sleeping apartments, plate and wine; it was held, that this was not a rateable occupation by the justices. *Reg. v. JJ. Worcestershire*, 11 A. & E. 57; *Hodgson v. Local Board of Health of Carlisle*, 8 El. & B. 230; see also *Reg. v. Manchester*, 3 E. & B. 336, where a building used exclusively as a county court was held not rateable on this ground.

Workhouses.] Governors or guardians of the poor are rateable in respect of their occupation of a workhouse, whether it be in their own or in another parish; for although the occupation is not beneficial to the guardians individually, yet the most beneficial mode of relieving the poor is an advantage to the body. *Gov. Bristol Poor v. Wait*, 5 A. & E. 1; *Reg. v. Wallingford Union*, 10 A. & E. 259.

Actual Profit need not be made.] If the occupation be of a beneficial nature and capable of producing profit *communibus annis*, it is immaterial whether an actual profit has been made in any particular year. Thus a dock company is rateable, although they have expended more than the amount of dues received in repairs

during the year. *R. v. Hull Dock Co.*, 5 M. & Sel. 394. So, occupiers of a coal mine who worked it at a loss, for the purpose of more advantageously working an adjoining mine through it, were held rateable. *R. v. Parrot*, 5 T. R. 593. But if the coal be exhausted the subject of occupation is gone, and there is no rateability. *R. v. Bedworth*, 8 East, 387. So, also, the proprietors of a bridge are rateable for it, where they might, if the speculation turned out well, receive seven and a half per cent. on their shares, although, in fact, the receipts were all absorbed by debts and incumbrances. *Reg. v. Blackfriars Bridge Co.*, 9 A. & E. 828. See *Reg. v. Vange*, 3 Q. B. 242. The result of the decisions is, first, that property must be valued in *communibus annis*, for the rent at which the property may be expected to let must be based on an average of past years (*R. v. Abney Park Cemetery*, L. R. 8 Q. B. 515; 42 L. J. M. C. 124); secondly, the entire value of the property occupied within the year is to be taken. *R. v. Whaddon*, L. R. 10 Q. B. 230; 44 L. J. M. C. 73.

Churches and Chapels.] By 3 & 4 Will. 4, c. 30, no persons are to be rated to any poor rates for any church, district church, chapel, meeting-house or premises, or for such part thereof as is exclusively appropriated to public worship, and which (other than churches, district churches and episcopal chapels of the Established Church) are duly certified for the performance of such religious worship. By sect. 2 the user for Sunday or infant schools, or for the charitable education of the poor, will not render them liable to rates.

Sunday and ragged schools may be exempted by the rating authority from the payment of rates. 32 & 33 Vict. c. 40. *Bell v. Crane*, L. R. 8 Q. B. 481; 42 L. J. M. C. 122. The Ecclesiastical Commissioners are not liable to be rated for land attached to a church. *Angell v. Paddington Vestry*, 40 L. J. M. C. 171.

Corporations.] Corporations, where they occupy beneficially, either by themselves or their servants, are rateable. *R. v. Gardner*, Cowp. 79; *R. v. Mayor of Sudbury*, 1 B. & C. 389. They are not exempt from rateability by reason that the income arising from their property is applicable to public purposes only. *Jones v. Mersey Docks*, 11 H. of L. C. 443; 35 L. J. M. C. 1; and 39 & 40 Vict. c. 61, s. 30. But the property of a municipal corporation is exempted from liability to a poor rate where the property is in a parish wholly within a borough, the poor of which are relieved by one entire rate. 4 & 5 Vict. c. 48; *R. v. Mayor of Oldham*, L. R. 3 Q. B. 474; 37 L. J. M. C. 169.

Successive Occupants.] If the occupier assessed in the rate when made ceases to occupy before the rate has been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate becomes occupied during the period for which the rate is made, the overseers are to enter in the rate-book the name of the person who succeeds or comes into the occupation, and the date when such occupation commences; and such occupier is henceforth deemed to have been actually rated from the date so entered by the overseer, and be liable to pay so much of the rate as is proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made. 32 & 33 Vict. c. 41, s. 16. This section only applies where there is an incoming occupier. *St. Werburgh v. Hutchinson*, L. R. 5 Ex. D. 19; 49 L. J. M. C. 23; 43 L. T. 153.

New Buildings.] When a new house or building is occupied in any parish where the poor rate is not made under the provisions of a Local Act, which house or building was incomplete or not fit for occupation, or was not entered as such in the valuation list in force in the parish at the time when the current rate for the time being was made, the overseers may enter such house or building, with the name of the occupier thereof and the date of the entry, in the rate-book, and require the occupier to pay such amount as according to their judgment shall be the proper sum, having due regard to the rateable value and the time which has elapsed from the making of the current rate to the date of entry. 31 & 32 Vict. c. 122, s. 38. Such occupier is considered as actually rated from such date, and is subject to the penalty of distress for non-payment, and has a power of appeal. *Id.*

When the overseers so enter the said house or building in the rate-book, they must forward to the assessment committee of the union a supplemental list with reference to such building, and the same is to be dealt with as a supplemental list made by the overseers under sect. 5 of Union Assessment Committee Act, 1862.

Rating Landlords of small Tenements, &c.] Vestries may resolve to rate the landlords of all houses, apartments, or dwellings which shall be let at an annual rent not exceeding £20, nor less than £6, for any less term than one year, or on any agreement by which the rent is reserved or made payable at any shorter period than three months. The assessment is to be made according to the actual rent at which every such house, apartment, or dwelling is let, after making a reasonable deduction from such rent, not exceeding in any case

one half of the same. 59 Geo. 3, c. 12, s. 19. The goods of occupiers may be distrained for rates to the amount of the rent actually due, and occupiers paying the rates may deduct the amount of their rent. Sect. 20. Every person receiving or claiming the rent of any such house, apartment, or dwelling for his or her own use, or receiving the same for the use of any corporation, or for any landlord who is a minor under coverture or insane, or for the use of any person who is not usually resident within twenty miles in which such dwelling is situated, is to be rateable as the owner thereof. Sect. 21. Persons rated as owners may appeal, and also vote in vestries. Sect. 22. No owner, not being the occupier, is to be rated in places where the right of voting for members of Parliament depends on the rating. The Act does not vary the mode of rating. Sect. 23.

Tenements Let for Short Terms.] The occupier of any rateable hereditament let to him for a period not exceeding three months is entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment is to be a valid discharge of the rent to the extent of the rate so paid. 32 & 33 Vict. c. 41, s. 1. Such occupier need not pay to the overseers at one time or within four weeks a greater amount of the rate than would be due for one quarter of the year. Sect. 2.

Where the rateable value of an hereditament situated in the metropolis does not exceed £20, or in the city of Liverpool £13, or in the city of Manchester or borough of Birmingham £10, or situated elsewhere £8, and the owner is willing to enter into a written agreement with the overseers to become liable to them for the poor rates in respect of such hereditament for any term not less than one year, and to pay the poor rates, whether the hereditament is occupied or not, the overseers may, subject to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding 25 per cent. on the amount thereof. Sect. 3.

The vestry may order that the owners of all such hereditaments shall be rated instead of the occupier, and thereupon as long as the order is in force—

1. The overseers shall rate the owners, and allow them a deduction of 15 per cent. from the amount of the rate :
2. If the owner of one or more rateable hereditaments gives written notice to the overseers that he is willing to be rated

for any term not less than a year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers are to rate such owner accordingly, and allow him a further deduction not exceeding 15 per centum from the amount of the rate during the time he is so rated :

3. The vestry may rescind any such order after a day to be fixed by them, such day not being less than six months after the date of such resolution. This section does not apply to any hereditament in which a dwelling house is not included.
- Sect. 4.

If owners omit to pay rates due on the 5th of January before the 5th of June they forfeit the commission. Sect. 5.

Such payments of rates by occupiers or owners are to be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor rate. Sect. 7.

Where the owners omit to pay the rates, the occupiers paying the same may deduct the amount from the rent, and the receipt for such rate is a valid discharge of the rent to the extent of the rate so paid. Sect. 8.

Every owner who agrees with the overseers to pay the poor rate, or who is rated or liable to be rated for any hereditament instead of the occupier, must deliver to the overseers from time to time, when required by them, a written list containing the names of the actual occupiers of the hereditaments comprised in such agreement, or for which he is so rated or liable to be rated. Sect. 9.

Every owner so rated may appeal against the valuation list and rate. Sect. 13.

Where by way of commission, abatement, or deduction, an allowance has been actually made, the same is, for the purpose of every qualification or franchise depending upon rating or payment of rates, to be deemed to have been duly made in pursuance of every proceeding necessary for the validity thereof, and to be an allowance which the overseers were empowered to make, and no such qualification or franchise is to be defeated by reason of such invalidity ; but overseers are not relieved from any liability incurred in consequence of making an illegal allowance. 42 Vict. c. 10.

By the 2 & 3 Will. 4, c. 45, s. 30, and the 14 & 15 Vict. c. 14, occupiers may claim to be rated, whether their landlord is or is not liable to be rated ; and upon their doing so, and paying or

tendering all rates due on the 5th of January preceding, they are entitled to be registered as voters for cities or boroughs, if otherwise duly qualified, without making any further claim. The 19 & 20 Vict. c. 112, s. 4, contains a similar provision as to voting for vestrymen under the Metropolis Local Management Act.

Entering Name in Rate-book.] The overseers, in making out the poor rate, must, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, who is then deemed to be duly rated for any qualification or franchise. 32 & 33 Vict. c. 41, s. 19. *Cross v. Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 53.

That enactment is of general application, and does not apply exclusively to cases where an agreement has been made under s. 3, or an order under s. 4. 41 & 42 Vict. c. 26, s. 14.

3. *In respect of what Property.*

Land and Houses.] The occupiers of lands, whether for pleasure or the ordinary purposes of cultivation, and the occupiers of houses, are rateable according to the value of their occupation, in whatever manner they are occupied, provided it be such as is capable of producing profit.

The proprietors of navigations who are the owners or exclusive occupiers of the soil covered with water are rateable for it; but they are not rateable where they have a mere easement over the soil. *R. v. Mersey and Irwell Navigation*, 9 B. & C. 95. Thus, if the soil be not vested in them, but they have power to scour and cleanse the bed of the river and to receive tolls for the use of it, this will not make them rateable. *R. v. Aire and Calder Navigation*, 9 B. & C. 820. But if they make additional cuts on land purchased by them, they are rateable for the occupation of those cuts, although the profits are earned chiefly by passing over the other parts of the navigation. *R. v. Thomas*, 9 B. & C. 114. A dry dock and stone bridges are accessories to a navigation, and must be considered as part of it. *R. v. Neath Canal Co.*, L. R. 6 Q. B. 707; 40 L. J. M. C. 193. Where trustees are not rateable as occupiers of a navigation, they cannot become so by erecting a dam to keep back the water. *R. v. Aire and Calder Navigation*, 9 B. & C. 820; *Bruce v. Willis*, 11 A. & E. 463.

The proprietors of canals are in the same manner rateable in respect of their occupation of the bed of the canal and the towing paths. *R. v. Stafford and Worcester Canal Co.*, 8 T. R. 340. And so also are railway companies who occupy land by their railways. *R. v. South Western Rail. Co.*, 1 Q. B. 558; see *post*, p. 286. The affixing posts into the ground to carry the wires of an electric telegraph is an occupation of land liable to rate. *Electric Telegraph Co. v. Salford*, 11 Exch. 181. So also the proprietors of docks are rateable occupiers. *R. v. Hull Dock Co.*, 1 T. R. 219; *R. v. Bristol Dock Co.*, 1 Q. B. 535. Pipes laid in the ground for the conveyance of gas or water constitute a rateable occupation of the land, if the proprietors have an exclusive right to the portion of the soil, though for a limited purpose only, and though their pipes are liable to be removed. *R. v. Bath*, 14 East, 609; *R. v. Brighton Gas Co.*, 5 B. & C. 466.

Upon the same principle road tramways are rateable. *Pimlico Tramways Co. v. Greenwich Union*, L. R. 9 Q. B. 9; 43 L. J. M. C. 29; 31 L. T. 319. A cemetery company are rateable in respect of plots of land sold by them for burial. *R. v. Abney Park Cemetery Co.*, L. R. 8 Q. B. 515; 42 L. J. M. C. 124.

Gas retorts, purifiers, steam-engines and gasholders are not moveable fixtures, and are therefore rateable as part of the freehold; but meters placed in private houses are not rateable, as being still chattels. *R. v. Lee*, L. R. 1 Q. B. 241; 35 L. J. M. C. 105. A university barge has been held not rateable. *Grant v. Oxford Local Board*, L. R. 4 Q. B. 9; 34 L. J. M. C. 39. Also a floating dock attached to a shipbuilding yard. *R. v. Morrison*, 22 L. J. M. C. 14. But a steamboat pier consisting of two barges which floated at high water was held rateable. *R. v. Forrest*, 27 L. J. M. C. 96. A derrick is rateable. *Cory v. Bristow*, L. R. 2 App. C. 262; 46 L. J. M. C. 273. A pier extending into the sea several feet beyond low water mark is not rateable under 31 & 32 Vict. c. 122, s. 27, which provides for the rating of extra-parochial places. *Blackpool Pier Co. v. Fylde Union*, 46 L. J. M. C. 89. The Metropolitan Board of Works, who own their sewers, are not rateable for them. L. R. 4 Q. B. 15; 38 L. J. M. C. 24.

Crown Property.] Land or houses in the possession of the Crown are not liable to be rated. *Amherst v. Somers*, 2 T. R. 372. Any persons who are allowed to occupy them beneficially, either in consideration of services or otherwise, may be rated for such parts as are appropriated to them. *Lord Bute v. Grindall*, 1 T. R.

338; *Ayre v. Smallpiece*, 2 Burr. 1060; *R. v. Matthews*, Cald. 1. Thus, the occupiers of apartments in Hampton Court Palace are rateable. *Reg. v. Lady Emily Ponsonby*, 3 Q. B. 14.

Land used for Public Purposes.] When land is so used, and the occupiers are prevented by statute from deriving the full pecuniary benefit which it is capable of producing, the land is to be rated with reference to the amount of profit actually made. *Worcester v. Droitwich*, L. R. 2 Ex. D. 49; 46 L. J. M. C. 241.

Rateable Value.] According to the method for a long time adopted by the courts, and expressly prescribed by the Parochial Assessments Act, the rent at which the land or other subject of rate would let from year to year is the criterion of the value of the occupation; and the same principle of rating must be adopted whether the party rated be the owner and occupier, or occupier only. See *R. v. Bridgewater Trustees*, 9 B. & C. 68.

The annual sum for which the property would let, *at the time when the rate is made*, is the proper criterion of rateable value, and not the rent actually paid for it, if the latter for any reason does not represent the real present value of the occupation. *R. v. St. Nicholas, Gloucester*, Cald. 262; *R. v. Mast*, 6 T. R. 154; *R. v. Skingle*, 7 T. R. 549.

The sessions are, in general, the proper judges of rateable value; but if they fix the proportions of rating by a wrong rule, the Queen's Bench Division will interfere. *R. v. Tomlinson*, 9 B. & C. 163; see *Reg. v. Cambridge Gas Co.*, 8 A. & E. 73. The occupiers of property capable of a beneficial occupation are liable to be rated in respect of its full rateable value, without regard to the amount of benefit which they themselves derive from that occupation. *R. v. Rhymney Rail. Co.*, L. R. 4 Q. B. 276; 38 L. J. M. C. 75.

Profits, how estimated.] Wherever the value of the occupation is enhanced by collateral circumstances arising out of the occupation itself, and not merely personal to the individual occupier, such improved value is that upon which the rate should be based. Thus, if the value of land is increased by the fact of there being a spring of mineral or other water in it, the profits of the spring ought to be taken into account. *R. v. Miller*, Cowp. 619; *R. v. New River Co.*, 1 M. & Sel. 503. So if the annual value of a house be increased by the use of it as a canteen; *R. v. Bradford*, 4 M. & Sel. 317; or as a public news-room; *R. v. Liverpool Exchange Prop.*, 1 A. & E. 465. In like manner if land be used as lime works,

clay pits or a slate quarry ; *R. v. Alberbury*, 1 East, 534 ; *R. v. Woodland*, 2 East, 164 ; *R. v. Brown*, 8 East, 528 ; or as a brickfield ; *Reg. v. Westbrook*, *Reg. v. Everist*, 10 Q. B. 178 ; or if any machinery or apparatus be erected upon it ; *R. v. Birmingham Gas Co.*, 6 A. & E. 634 ; the land ought to be rated with reference to the value of its actual mode of occupation. So the profits of a steelyard, or a weighing or carding machine, or the like, erected in a house and producing increased value to it, ought to be taken into consideration ; *R. v. St. Nicholas, Gloucester*, Cald. 262 ; *R. v. Hogg*, 1 T. R. 721 ; *Reg. v. Haslam*, 17 Q. B. 220 ; without reference to the fact of the machinery being personal property and therefore not rateable *per se.* *Reg. v. Guest*, 7 A. & E. 951. But see *Robinson v. Learoyd*, 7 M. & W. 48, where it was held that steam-power let with a room, and supplied by a revolving shaft, ought not to be included in the estimate. See *post*, p. 290.

Where land was occupied as a landing-place for steamboats, by means of floating barges anchored to the bottom of the river and communicating with the shore, the value of the occupation was considered as enhanced by the barges. *Reg. v. Leith*, 1 E. & B. 121. But a floating dock occasionally moored to the side of a shipbuilding yard, and used to support vessels while under repair, was held not to be properly taken into consideration. *Reg. v. Morrison*, 1 E. & B. 150. As to cases where the value is enhanced by tolls, see *post*, p. 289.

But it is only profits arising from the occupation of the land in the rating parish which can increase the rateable value there. *R. v. Bath*, 14 East, 609. Thus dues payable to a dock company for entering a port or harbour of which they are not occupiers, cannot increase the rateable value of the docks which they do occupy. *R. v. Bristol Dock Co.*, 1 Q. B. 535 ; *Reg. v. Hull Dock Co.*, 7 Q. B. 2 ; see also *Reg. v. London and South-Western Railway Co.*, 1 Q. B. 558. So where drains were made through land the whole benefit of which was derived by lands in another parish, the drainage commissioners were held not liable to be rated, as they had no pecuniary advantage whatever ; but the occupiers of the lands benefited were liable to be rated at the improved value in consequence of the drainage. *R. v. Sculcoates*, 12 East, 40 ; but see *Reg. v. Kentmere*, 17 Q. B. 551. A bridge company is rateable in a parish in which one of the piers of the bridge stands, for part of the tolls paid for the use of the bridge is earned there. *R. v. Barnes*, 1 B. & Ad. 113. So a coal mine extending under

two parishes is rateable in each, though the shafts, engines and fixed machinery for working it are in one parish only. *R. v. Foleshill*, 2 A. & E. 593.

Moreover, any pecuniary advantage received by the occupier, which does not spring out of the fruits of the occupation, but is merely personal, or, at all events, so disconnected with the value of the rateable subject that it cannot add to its rent, ought not to be included. *Newmarket Rail. Co. v. St. Andrew's the Less*, 3 E. & B. 94; see *R. v. Liverpool Exchange Prop.*, 1 A. & E. 465; but in *Allison v. Monkwearmouth Shore*, 4 E. & B. 13, it was decided that the privilege of supplying beer to certain public houses, demised together with a brewery, at a single rent, was properly taken into account in fixing the rateable value. See *post*, p. 286.

Expenses deducted.] While, on the one hand, any collateral increase of profit adds to the rateable value, any expenses properly applicable to the occupation, and necessary to keep the land or other subject in a state to command the assumed rent, ought to be deducted from its rateable value. See *R. v. Cambridge Gas Co.*, 8 A. & E. 73. Thus, the expense of a steam tug, kept by a dock company for towing ships in and out of their docks, was allowed as a deduction from the rateable value of the docks. *Reg. v. Southampton Dock Co.*, 14 Q. B. 587. But a cemetery company cannot deduct the salaries of directors and the expense of a central office. *Reg. v. St. Giles, Camberwell*, 14 Q. B. 571. It is immaterial whether the expenses arise in the rating parish or elsewhere, provided they diminish the value of the occupation there. *Reg. v. Brighton, &c., Rail. Co.*, 15 Q. B. 313; *Reg. v. Great Western Rail. Co.*, 15 Q. B. 1085. See *R. v. Gainsborough*, L. R. 7 Q. B. 64; 41 L. J. M. C. 1.

The above principles are applicable in whatever manner land is occupied to a profit; the difficulty lies in applying the principle to each particular case.

Docks.] Where land is occupied as a dock, the proprietors are rateable according to the net profits arising from payments made by ships for the use of the dock. *R. v. Hull Dock Co.*, 1 T. R. 219; *Reg. v. Hull Dock Co.*, 7 Q. B. 2. *Mersey Docks Cases*, 8 L. R. Q. B. 445; 42 L. J. M. C. 141; 9 L. R. Q. B. 84; 43 L. J. M. C. 33.

As to the rateability of docks communicating with one another, forming one concern and constituting one source of profit, but

extending into more parishes than one, see *R. v. Dock Co. of Kingston-upon-Hull*, 15 Q. B. 325. *Mersey Docks v. Liverpool*, L. R. 7 Q. B. 643; 41 L. J. M. C. 161.

Water or Gas Works.] If the value of the land be increased by water or gas pipes being laid in it, the rate should be to the extent of the increased value of the land, by reason of its being so occupied. *R. v. Bath*, 14 East, 609; *R. v. Rochdale Waterworks Co.*, 1 M. & Sel. 634; *R. v. Birmingham Gas Co.*, 1 B. & C. 506; *R. v. Brighton Gas Co.*, 5 B. & C. 466. *Worcester v. Droitwich Union*, L. R. 2 Ex. D. 49; 46 L. J. M. C. 241. *East London Waterworks Co. v. Leyton*, L. R. 6 Q. B. 669; 40 L. J. M. C. 90.

Canals and Navigations.] The proprietors of a canal are rateable according to the net profits earned by the use of the land in the rating parish, to the extent of the rent for which the canal, with all its advantages, would let. Although tolls are not rateable *per se*, yet they may enhance the value of the occupation of land. *R. v. Stafford Canal Co.*, 8 T. R. 340; *R. v. Chaplin*, 1 B. & Ad. 926. And the same principle applies to river navigations. *R. v. Milton*, 3 B. & Ald. 112. See *ante*, p. 281.

The fact of no tolls being *received* in the parish is immaterial; if any part of a toll, paid elsewhere, is received for the use of the part of the canal in the rating parish, or is *earned* in that parish, it is properly taken into consideration there. *R. v. Trent and Mersey Navigation*, 1 B. & C. 545; *R. v. Leeds and Liverpool Canal Co.*, 5 East, 325. And if one part yield a greater amount of toll than another it must be rated proportionably higher. *R. v. Kingswinford*, 7 B. & C. 236; *R. v. Chaplin*, 1 B. & Ad. 926. See *post*, p. 286, as to apportioning rateable value. If a canal company makes a separate profit of its warehouses or buildings, it is rateable for that profit only in the parish where such buildings are situate. *R. v. Lower Mitton*, 9 B. & C. 810.

In estimating the rateable value of a canal, the expense of repairing a tunnel, repairing the locks or an aqueduct, carrying the canal across a valley, are to be taken as works constructed necessarily for the use of the whole canal, and therefore distributable on the mileage principle over the whole canal; *R. v. Coventry Canal*, 28 L. J. M. C. 102; but the expense of repairing the banks of the canal is a local expense, and to be deducted from the earnings in the parish. *R. v. Oxford Canal Co.*, 10 B. & C. 176.

A rent or sum of money paid by a railway company to a canal company, under a guarantee in a lease to make up a deficiency in the earnings of the canal company, is not to be taken into account in determining the rateable value of the canal. *R. v. Lapley Overseers*, 9 B. & S. 568. See also *Grand Junction Canal Co.*, L. R. 6 Q. B. 173; 40 L. J. M. C. 25; *Regent's Canal Co. v. St. Pancras*, L. R. 3 Q. B. D. 73; 47 L. J. M. C. 37.

Railways.] The same principle of rating applies to railways, though from the peculiar nature of that kind of occupation greater difficulties arise in its application, owing to railway companies being in most cases carriers on their own lines, and their profits, therefore, arising in a great measure from trade, as distinguished from the mere occupation of land. The cases which have been decided on the rating of railways are collected in *Castle on Rating*, and in the digest of cases in vol. ii. of *Neville and Macnamara's Railway Cases*.

Public houses.] A licence is one of the circumstances that affects the rateable value of a public house. *R. v. Bradford*, 4 M. & S. 317; *Allison v. Monkwearmouth*, 23 L. J. M. C. 177; *Sunderland v. Sunderland Union*, 34 L. J. M. C. 121.

Apportionment of rateable Value.] Where a continuous undertaking connected with the occupation of land extends through several parishes each is entitled to rate the occupiers for the portion occupied therein, the rateable value in each parish being ascertained by an estimate of the rent reasonably to be expected for the part occupied in it, considered, not as isolated from, but as held in conjunction with, the rest of the concern. In the case of railways and some canals, where the profit earned depends upon the portion actually traversed, the rateable value of the portion comprised in each parish must be separately ascertained with reference to the net profits earned by that part. *R. v. Kingswinford*, 7 B. & C. 236; *Reg. v. Brighton, &c., Rail. Co.*, 15 Q. B. 313; *Reg. v. Mile End Old Town*, 10 Q. B. 208. See *Reg. v. Hammersmith Bridge Co.*, 15 Q. B. 369.

But if one uniform sum is paid for passing over any part, great or small, of a canal, or, in the case of water or gas companies, where the same payment is made by the consumer, irrespectively of the distance along which the water or gas has been carried, the rateable value in each parish may be ascertained by dividing the whole rateable value in proportion to the length or area of land occupied in each parish. *R. v. Woking*, 4 A. & E. 40. *Reg. v.*

Hull Dock Co., 18 Q. B. 325. So, as to a bridge in two parishes, where the profit arises from one uniform toll paid for passing over. *Reg. v. Hammersmith Bridge Co.*, *supra*. See *Reg. v. North and South Shields Ferry Co.*, 1 E. & B. 140, as to this principle not being applicable to a ferry.

Scientific Societies.] By the 6 & 7 Vict. c. 36, no person is to be assessed or liable to pay to any county, borough, parochial or other rates or cesses in respect of any land, houses or buildings belonging to any society instituted for purposes of science, literature or the fine arts exclusively, either as tenant or owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes ; provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division or bonus in money unto or between any of its members ; and provided it obtains the certificate of the barrister appointed to certify friendly societies.

In order to entitle a society to this exemption, the promotion of science, literature or the fine arts must be its primary object, and not merely the gratification of its own members by means of such pursuits. *Reg. v. Brandt*, 16 Q. B. 462. And the premises must be *occupied* solely for these purposes. *Purvis v. Traill*, 3 Exch. 344. Thus, the Linnæan Society is exempt ; *Linnæan Society v. St. Anne, Westminster*, 3 E. & B. 793 ; the *Bradford Library and Literary Society*, and the *Liverpool Library* are also exempt ; 28 L. J. M. C. 73, and 29 L. J. M. C. 221 ; but not the Zoological Society, *Reg. v. Zoological Society*, 3 E. & B. 807 ; nor the United Service Institution, *Reg. v. Cockburn*, 16 Q. B. 480 ; nor the Institution of Civil Engineers, L. R. 5 Q. B. D. 48 ; 49 L. J. M. C. 34. Libraries, properly so called, are exempt ; *Birmingham v. Shaw*, 10 Q. B. 868 ; *Reg. v. Manchester*, 16 Q. B. 449 ; *Earl of Clarendon v. St. James, Westminster*, 10 Com. B. 806 ; but news-rooms are not ; *Reg. v. Gaskell*, 16 Q. B. 472 ; *Reg. v. Phillips*, 8 Q. B. 745 ; *Russell Institution v. St. Giles*, 3 E. & B. 406 ; *Purchas v. St. Sepulchre, Cambridge*, 4 E. & B. 156 ; nor are religious or educational societies exempt. *Reg. v. Jones*, 8 Q. B. 719 ; *R. v. Pocock*, *Ibid.* 729 ; *Reg. v. Phillips*, *Ibid.* 745 ; *Reg. v. Baptist Missionary Society*, 10 Q. B. 884 ; *Scott v. St. Martin-in-the-Fields*, 25 L. J. M. C. 42.

There must also be an express rule of the society prohibiting a dividend. *Reg. v. Jones*, 8 Q. B. 719 ; *Reg. v. Phillips*, *Ibid.* 745.

But the receipt of a small fee for admission will not take away the exemption; *Reg. v. Manchester*, 16 Q. B. 449; nor will letting off part of the premises. *Ibid.*; *Linnæan Society v. St. Anne, Westminster*, 3 E. & B. 793.

The certificate of the barrister is not conclusive as to the exemption. *Reg. v. Phillips*, 8 Q. B. 745. The exemption under this Act must be claimed by appealing against the rate; it does not render the rate void. *Birmingham v. Shaw*, 10 Q. B. 868.

There is an appeal against the certificate, given to any person assessed to the rate, within four calendar months after the assessment. See *Reg. v. Pocock*, 8 Q. B. 729; *Reg. v. Staey*, 14 Q. B. 789.

Lunatic Asylums.] By 16 & 17 Vict. c. 97, s. 35, lunatic asylums are not to be assessed to rates at a higher value or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition. This exemption has been extended by the case of *R. v. Overseers of Fullbonne*, 34 L. J. M. C. 106; *Congreve v. Overseers of Upton*, 33 L. J. M. C. 83.

Volunteer Armouries.] Are exempt from all rates. 26 & 27 Vict. c. 65, s. 26. As to rifle range, *R. v. Surrey*, 41 L. J. M. C. 133.

Incorporeal Hereditaments.] Incorporeal hereditaments are not the subject of rate. Where the word "hereditaments" occurred in a Local Act, it was held to apply only to such hereditaments as are capable of actual corporeal occupation. *Colebrooke v. Tickell*, 4 A. & E. 916. Thus, a person having a mere right of common is not rateable in respect of it. *R. v. Churchill*, 4 B. & C. 750; *R. v. Alnwick*, 9 A. & E. 444; *R. v. Watson*, 5 East, 480; *R. v. Tewkesbury*, 13 East, 155.

Sporting Rights.] Rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land, are rateable, not only to the relief of the poor but to all local rates. 37 & 38 Vict. c. 54, s. 3. *Kendrick v. Guilsfield*, L. R. 5 C. P. D. 41; 49 L. J. M. C. 27; *Eyton v. Overseers of Mold*, W. N. Nov. 27, 1880.

Rights of Way.] A person who has the *exclusive* right to a way is rateable for it as an occupier of the soil. *R. v. Bell*, 7 T. R. 598. But a mere easement or right of passing over the land of another does not confer rateability. *R. v. Jolliffe*, 2 T. R. 90; *Pimlico Tramways Co. v. Greenwich Union*, 43 L. J. M. C. 31. The possession of running powers by one railway company over the line of

another company confers an easement which is not rateable. *Midland Railway Co. v. Badgworth*, 34 L. J. M. C. 25.

Tolls.] Tolls, *per se* and unconnected with the occupation of land, are not rateable; *R. v. Fyfe*, 12 East, 416. Tolls may be received from persons who may be in occupation of land, but unless the tolls are received by virtue of the occupation they are not rateable, and, therefore, if they are received as separate and independent things, and are matters in gross, they are not rateable. *Per Blackburn J.*, in *Mersey Docks Case*, L. R. 9 Q. B. 90. *Lewis v. Swansea*, 5 E. & B. 508; or tolls of a ferry; *R. v. Nicholson*, 12 East, 330; *Williams v. Jones*, 12 East, 346; *Reg. v. North and South Shields Ferry Co.*, 1 E. & B. 140; or of a market; *Mayor of London v. St. Sepulchre*, L. R. 7 Q. B. 333; 48 L. J. M. C. 109 n.; *Caswell v. Wolverhampton*, L. R. 7 Q. B. 328; 41 L. J. M. C. 108; *R. v. Bell*, 5 M. & Sel. 221; unless they be for stallage, which is connected with the occupation of land. *Roberts v. Aylesbury*, 22 L. J. M. C. 34. *Percy v. Ashford*, 34 L. T. 579. *Spear v. Bodmin Union*, 43 L. T. 127. So, dues payable by ships passing a lighthouse do not constitute any part of the rateable value of the lighthouse. *R. v. Coke*, 5 B. & C. 797. But when tolls arise from the occupation of visible property locally situate in the parish, they increase the value of that occupation, as for the use of a towing path; *R. v. Mayor of London*, 4 T. R. 21; or a bridge; *R. v. Burnes*, 1 B. & Ad. 113; *R. v. Marquis of Salisbury*, 8 A. & E. 716; or a canal lock; *R. v. Macdonald*, 12 East, 324; or a sluice; *R. v. Cardington*, 2 Cowp. 581; *R. v. Salter's Load Sluice*, 4 T. R. 730. Harbour dues, like similar sources of revenue, are only rateable where they are connected with the occupation of land. *Lewis v. Swansea*, 25 L. J. M. C. 33; *Bishopwearmouth v. Earl of Durham*, 28 L. J. M. C. 232; *New Shoreham Harbour Commissioners v. Lancing*, L. R. 5 Q. B. 489; 39 L. J. M. C. 121. As to toll house, *R. v. Bedminster*, 45 L. J. M. C. 117.

By 3 Geo. 4, c. 126, s. 51, turnpike road tolls and toll houses are not rateable.

Trade Profits.] 3 & 4 Vict. c. 89 (continued annually), enacts, "that it shall not be lawful for the overseers of any parish, township or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability, derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor." And this exemption is preserved, notwithstanding such property may be

included in a valuation list made under 25 & 26 Vict. c. 103, by s. 36 of that Act.

Trade profits like tolls are not rateable *per se*. But when they improve the value of the occupation they must be taken into account. *R. v. Snouclon*, 2 L. J. M. C. 60; *R. v. North Aylesford Union*, 37 J. P. 148; *R. v. Verrall*, L. R. 1 Q. B. D. 9; 45 L. J. M. C. 29.

Machinery.] The cases on the rateability of machinery appear to decide that the question to be considered is whether in a tenancy from year to year the property is so attached to the premises that it would be the province of the landlord to supply it; and this question is for the tribunal which has to determine the facts, and to do so inquiry must be made into all the circumstances of the particular case, and reference made to the usual incidents of a yearly tenancy. See *Holland v. Holland*, L. R. 7 C. P. 328; 41 L. J. C. P. 146; *Chidley v. West Ham*, 36 J. P. 310, and *Castle on Rating*. Machinery attached to premises increases the rateable value. *Laing v. Bishopwearmouth*, L. R. 3 Q. B. D. 299; 47 L. J. M. C. 41.

Tithes.] By 43 Eliz. c. 2, s. 1, "tithes impropriate and appropriations of tithes" are rateable to the poor.

Where under an Act of Parliament the tithes are extinguished, and an annual rent, or sum of money per acre, is paid in lieu thereof, the rector will be rateable in respect of such rent; *R. v. Lacy*, 5 B. & C. 702; *R. v. Wistow*, 5 A. & E. 250; unless expressly exempted by the Act. *Chatfield v. Ruston*, 3 B. & C. 863; *Mitchell v. Fordham*, 6 B. & C. 274; *Reg. v. Shaw*, 12 Q. B. 419.

If, however, the tithes are not extinguished, but merely transferred to another person who pays a sum of money in lieu of them to the parson, the latter is not rateable for this. *R. v. Great Hambleton*, 1 A. & E. 145.

As to the mode of rating tithe rent-charges, see *Pritchard's Quarter Sessions*, p. 863.

Coal Mines.] The occupier of a coal mine is rateable to the poor at the sum for which the mine would let to a tenant, subject to outgoings, and not at the amount of royalty or rent actually paid; nor is any allowance to be made for money expended in rendering the mine productive. *R. v. Attwood*, 6 B. & C. 277. Where the occupier erected a steam engine for working the mine, and thereby

improved its annual value, he was held rateable in respect of such improved value. *R. v. Lord Granville*, 9 B. & C. 188.

The occupiers of coal mines are liable to be rated for them as long as they continue to work them, whether they produce a profit or not; *R. v. Parrot*, 5 T. R. 593; but they are not rateable for them before they are worked and productive; *R. v. Bishop of Rochester*, 12 East, 353.

Other Mines.] Mines of every kind are now liable to be rated not only to the relief of the poor but to all local rates. 37 & 38 Vict. ss. 3, 10. By s. 7, where tin, lead, or copper mines are let on lease granted with fine on a reservation of *dues*, the rateable value is to be the amount of the dues paid during the previous year. See *Talargoch Mining Co. v. St. Asaph*, L. R. 3 Q. B. 478; 37 L. J. M. C. 149.

Plantation and Saleable Underwood.] By 37 & 38 Vict. c. 54, s. 11, so much of 43 Eliz. c. 2 as relates to the taxation of an occupier of saleable underwoods is repealed. And by ss. 3 and 10 the Act of Elizabeth and amending Acts are to extend to and make rateable to local rates as well as poor rates "land used for a plantation or a wood, or for the growth of saleable underwood, and not subject to any rights of common." By s. 4, the gross and rateable value of any land so used is to be estimated as follows:

If the land be used only for a plantation or a wood, the value is to be estimated as if the land instead of being a plantation or a wood were let and occupied in its natural and unimproved state: If the land is used for the growth of saleable underwood, the value is to be estimated as if the land were let for that purpose: If the land is used both for a plantation or a wood and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine.

By s. 5, where the rateable value of any land used for a plantation or a wood, or both for a plantation or wood and for the growth of saleable underwood, is increased by reason of the same being estimated under the Act, the occupier of that land under any lease or agreement made before the commencement of the Act (August 1874) may, during the continuance of the lease or agreement, deduct from his rent any poor or other local rate, or any portion thereof which is paid by him in respect of such increase of

rateable value, and every assessment committee, on the application of such occupier, is to certify in the valuation list or otherwise the fact and amount of such increase. The nature and quality of the wood are not to determine what constitutes saleable underwoods, but the mode of cultivation and management, as by being cut down for sale at regular and calculable periods. *Lord Fitzhardinge v. Pritchett*, L. R. 2 Q. B. 135 ; 36 L. J. M. C. 49. It is a question of fact, to be determined by the sessions, whether trees are saleable underwood or not. *Reg. v. Narberth North*, 9 A. & E. 815. And see 35 L. T. 332 ; 33 L. T. 755 ; and 36 L. T. 108.

Where Property rateable.] The parish in which any land liable to rate is situated is entitled to rate the occupier of it according to its annual rateable value there. *Kempe v. Spence*, 2 W. Bl. 1244. And so it is where one entire subject of occupation extends into several parishes, each is entitled to rate the occupier according to the proper proportion of the rateable value existing within it. By the 17 Geo. 2, c. 37, waste lands which have been drained or improved are rateable in the nearest parish ; and in case of a dispute, the question is to be determined by the sessions on appeal. See *ante*, p. 286.

Conjoint Rating.] If a man be rated at one entire sum, in respect of two things, one of which is not rateable, the whole rate is bad. *R. v. Cunningham*, 5 East, 478.

Poor Rate Assessment in London.]—See Union Assessment Committee Acts, 1862, and 1864 (25 & 26 Vict. c. 103, and 27 and 28 Vict. c. 39), and the Valuation Metropolis Act, 1869 (32 & 33 Vict. c. 67).

4. *Appeal against Rate.*

By 43 Eliz. c. 2, s. 6, any person grieved with any tax or other act done by churchwardens may appeal to the justices in quarter sessions, who may make an order which shall conclude and bind all parties. Every owner of any hereditament for the rates of which he has become liable has the same right of appeal as if he were an occupier. 32 & 33 Vict. c. 41, s. 13. As to appeals by overseers against valuation list of union, see 25 & 26 Vict. c. 103, s. 32, 27 & 28 Vict. c. 39.

Grounds of Appeal.] The several grounds of appeal against a rate may be classed as follows :—1. That the appellant should not have been rated at all. 2. That the rate is unequal, by reason of

the appellant being over-rated ; of other persons being under-rated ; or of other persons being omitted. 3. That the rate is bad on the face of it. 4. That the rate is not made by proper persons. 5. That the rate is not made for a proper purpose. 6. That the rate is not made for a proper period.

Where several Parishes.] Where an appeal is brought against the poor rate of a parish in a union which appeal appears to involve a principle in which some neighbouring parish has a common interest, the guardians of the unions comprising such parishes may enter into an agreement mutually to bear the costs of the appeals, if any, which may be awarded against the respondents in such proportions as shall be determined with reference to the amount of interest of the several unions in the question. 31 & 32 Vict. c. 122, s. 29.

Notice of Appeal.] Before any appeal can be heard by any special or quarter sessions against a poor rate for any parish contained in any union to which the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103, s. 42), applies, the appellant must give twenty-one days' written notice to assessment committee of such union of his intention to appeal, and the grounds thereof. No person can appeal to any sessions against a poor rate made in conformity with valuation list approved of by such committee unless he has given them notice of objection against the list, and has failed to obtain such relief in the matter as he deems just. 27 & 28 Vict. c. 39, s. 1. *R. v. G. W. Ry. Co.*, L. R. 4 Q. B. 323 ; 38 L. J. M. C. 89. *R. v. Wiltshire*, L. R. 4 Q. B. D. 326.

Judgment.] The sessions are to amend the rate, in such manner only as is necessary for giving relief, without altering it with respect to other persons mentioned in it ; but if upon appeal from the whole rate, it is found necessary to quash it, the sessions are to order the parish officers to make a new equal rate, and they are required to do so accordingly. 17 Geo. 2, c. 38, s. 6. A justice is not disqualified for hearing the appeal because he is rated for some other parish in the same union than that against which the rate appealed against is made. 27 & 28 Vict. c. 39, s. 6.

Special Case.] At any time after notice of appeal has been given, the parties may, by consent, and by order of a judge of one of the Superior Courts, state the facts in a special case for the opinion of such Court, and agree that a judgment in conformity with the decision of such Court, and for costs, may

be entered on motion by either party at the sessions. 12 & 13 Vict. c. 45, s. 11.

The sessions may state a case for the opinion of the Queen's Bench Division and decide the appeal subject to that case.

5. *Levying Poor Rate.*

Power to Distrain.] By the 43 Eliz. c. 2, s. 4, churchwardens and overseers, by warrant from any two justices, may levy all arrearages, according to the assessments, by distress and sale. It seems doubtful whether, in strictness, a rate due from a person who dies before it is paid, can be levied upon his representative. But at all events, before this can be done, the latter must be summoned, for he may be able to show good cause against such a demand, as want of assets, &c. *Sterens v. Evans*, 2 Burr. 1152.

Summons.] In every case the exact sum due must be demanded, and the party summoned to appear before the justices, before a distress warrant issues. *R. v. Benn*, 6 T. R. 198; *Hurrell v. Wink*, 8 Taunt. 369; *Harper v. Carr*, 7 T. R. 270. Each of several joint occupiers is liable for the whole rate. *Paynter v. Reg.* 10 Q. B. 908. The goods of one churchwarden or overseer may be seized under a distress by the others. *Skingley v. Surridge*, 11 M. & W. 503.

By the 12 Vict. c. 14, s. 5, the summons must be directed to the party rated, and may be in the form given in the schedule to that Act, or to the like effect. It may be served by a churchwarden or overseer, or the constable or other person to whom it is delivered, either personally or at the last place of abode. If the party does not appear, the justices, on proof of service of the summons, may proceed *ex parte*.

Consolidation of Proceedings.] Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same document required by law to be laid before justices, or to be issued by justices, and every such document, as respects each rate or tax comprised in it, is to be construed as a separate document, and its validity as respects any one rate is not to affect its validity as respects any other rate. 25 & 26 Vict. c. 82, s. 1. No costs are to be allowed in respect of such several documents where the justices think one document would have sufficed. *Id.*

Warrant of Distress.] By 12 Vict. c. 14, justices may in their warrant order that the costs of obtaining it, together with the costs of the distress, be levied. Sect. 1. They may also order the party to be imprisoned for a period not exceeding three calendar months in default of distress. Sect. 2.

One warrant of distress may be issued against any number of persons neglecting or refusing to pay the rate; but a single warrant of commitment cannot issue against several in default of distress. Sect. 3.

The warrants may be directed to the churchwardens and overseers, or the overseers, and to the constable and any other persons, or to any one or more of them. Sect. 4.

42 & 43 Vict. c. 49, s. 57, does not apply to poor rates so as to make them a civil debt recoverable in the manner provided for in that section. *R. v. Price*, 49 L. J. M. C. 49; 42 L. T. 439.

Where Distress may be made.] By 17 Geo. 2, c. 38, s. 7, the goods may be levied by warrant of distress, not only in the same parish or place, but in any other place within the same county; and if sufficient distress cannot be found there, then on oath being made before some justice of any other county, and certified on the said warrant, the defaulter's goods may be levied in such other county or precinct, subject to an appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made. The 54 Geo. 3, c. 170, s. 12, is to the same effect, including the right so to distrain for poor or highway rates.

Tender of Rate.] If before the party is imprisoned he tenders the rate and costs to the churchwardens or overseers, or person authorized to collect it, all further proceedings for the recovery thereof are to cease. 12 Vict. c. 14, s. 6. A tender of the rate without the costs is bad. *Walsh v. Southworth*, 6 Exch. 150.

What may be distrained.] Money may be distrained for the poor rate as well as goods. *East India Company v. Skinner*, 1 Bott, 249. *Hutchins v. Chambers*, 1 Burr. 579.

The Bankruptcy Act, 1869, provides that all parochial or other local rates due from the bankrupt at the date of the order of adjudication, and having become due and payable within twelve months next before such time are to be considered preferential debts, and as such payable in priority to other debts. 32 & 33 Vict. c. 71, s. 32. By s. 125, the property of a debtor under a

making and levying the rate, that a fair and correct estimate cannot be made without a new valuation, may order a survey to be made of the messuages, lands and other hereditaments liable to poor rates in such parish, or in all or any of the parishes of such union, and a valuation to be made of the said messuages, &c., according to their annual value. But it seems the parish officers are not bound by this valuation, even where there has been no subsequent alteration in value. See *R. v. Bangor*, 16 L. J. M. C. 58; *R. v. Hurstborne Tarrant*, 27 L. J. M. C. 214; 31 L. T. 115.

By the 11 & 12 Vict. c. 110, s. 7, the guardians of an union may, on the application of the majority of the overseers of any parish comprised in it, or of any person assessed to the poor rate, cause a new valuation to be made of part only of the rateable property in the parish, and charge the expense to the overseers or the party applying. These provisions apply to the guardians of a parish not comprised in any union. 31 & 32 Vict. c. 122, s. 28.

Rate must be equal.] All persons must be rated on the same scale. If any one be rated on a comparatively higher scale than others, he may appeal. Where lands were charged at one-half the rental, and personal estate only at one-fortieth part of the interest of it, the court quashed the rate as being unequal on the face of it. *R. v. Lackenham*, 1 Bott, 105. But the inequality must be manifest, or the court will presume the rate to be equal; and they will not presume it to be unequal because lands and houses are rated differently. *R. v. Brograve*, 4 Burr. 2491; *R. v. Butler*, Cald. 93; *R. v. Tomlinson*, 9 B. & C. 163. The proportion must ever depend upon local circumstances. *R. v. Sandwich*, 2 Dougl. 562.

Period for which made.] A standing rate cannot be made, it must be varied as circumstances change. *R. v. Audly*, 2 Salk. 526. A rate must not be retrospective. *R. v. Goodcheap*, 6 T. R. 159. There cannot be two rates in force for the same period. *Reg. v. Fordham*, 11 A. & E. 73. When the overseers make a rate they are to set forth in the title of the rate the period for which the same is estimated, and if the same is payable by instalments the amount of each instalment. 32 & 33 Vict. c. 41, s. 14.

Publication of.] The 17 Geo. 2, c. 3, s. 1, requires that the overseers, &c., shall give public notice of the rate on the *next Sunday* after it has been allowed by the justices, otherwise it is null and void. This is done by affixing the notice, previously to divine service, on or near to the principal doors of all the churches and

chapels within the parish or place for which it is made. 7 Will. 4 & 1 Vict. c. 45, s. 2. Publication by affixing a notice upon the church door previously to the evening service is sufficient. *Burnley v. Methley*, 28 L. J. M. C. 152. See *Ormerod v. Chadwick*, 16 M. & W. 367; *Reg. v. Marriott*, 12 A. & E. 779. If notice is not given on the next Sunday, it is a radical defect in the rate itself, which is therefore a nullity. *R. v. Newcomb*, 4 T. R. 368; *Sibbald v. Roderick*, 11 A. & E. 38; *Fox v. Davies*, 6 Com. B. 11.

The notice need not show *how* the rate was allowed. *Paynter v. Reg.*, 10 Q. B. 908. After a rate has been allowed and published it cannot be abandoned, so as to prevent its being an existent rate, though the parish officers may decline to support it on appeal. *Reg. v. Fouch*, 2 Q. B. 308. The production of the book containing a poor rate, with the allowance of the rate by the justices, is, if the rate is made in the form prescribed by law, *prima facie* evidence of the due making and publication of such rate. 32 & 33 Vict. c. 41, s. 18.

Demand of Inspection.] The 17 Geo. 2, c. 3, s. 2, enacts that the overseers shall permit inhabitants of the parish to inspect the rates at all seasonable times; and by sect. 3, if any overseer does not permit an inhabitant to inspect the rate, he is to forfeit for every such offence to the party aggrieved 20*l*. An overseer or assistant overseer duly appointed is liable to this penalty if, on demand, he refuses to produce a rate in his custody. *Bennett v. Edwards*, 8 B. & C. 702. But a clerk appointed under a local Act to take care of rate-books, &c., is not within the Act. *Whitchurch v. Chapman*, 3 B. & Ad. 691. The persons entitled to demand inspection under this Act are the inhabitants, as distinguished from the parish officers; therefore, a churchwarden cannot sue an overseer for refusing to produce the rate-book to him. *Wethered v. Calcutt*, 4 M. & Gr. 566; *Tennant v. Bell*, 9 Q. B. 684. A *mandamus* does not lie to inspect a poor rate under this section. *R. v. St. Marylebone*, 5 A. & E. 268.

By 6 & 7 Will. 4, c. 96, s. 5, any person rated may, at all reasonable times, take copies of or extracts from the rate without paying anything for the same; and in case the person having the custody of such rate refuses to permit such person so rated to take copies thereof, or extracts therefrom, the person so refusing, or not permitting such copies to be made, is to forfeit any sum not exceeding five pounds, to be recovered in a summary way before any

liquidation is to be distributed in the same manner as in a bankruptcy.

When Distress proper.] The justices cannot refuse a warrant of distress to enforce the payment of a poor rate, on the ground that there is a want of certainty as to the property included in it; such a defect being ground of appeal only. *R. v. Wilson*, 5 N. & M. 119.

The justices who issue a distress warrant to levy a rate are not liable to be sued for any irregularity or defect in the rate, or by reason of the party not being liable to be rated. 11 & 12 Vict. c. 44, s. 4.

By 17 Geo. 2, c. 38, s. 8, a distress for a poor rate is not to be deemed unlawful (if the sum is really due) on account of any defect in the rate or warrant, but the party grieved is to recover for special damage only in an action on the case, and not at all if tender of sufficient amends has been made before action brought.

Costs.] In all cases where a warrant of distress is issued against a person for the recovery of a poor rate he is liable to pay the cost of such warrant, and of the broker or other officer for his attendance to make the levy, although such person may tender the amount of the rate before any levy is made. 39 & 40 Vict. c. 61, s. 31.

Mandamus to grant Warrant.] The Court will not grant a *mandamus* to justices commanding them to grant a distress warrant for a poor rate, where the validity of the rate or liability of the party is doubtful; *R. v. Newcomb*, 4 T. R. 368; nor where the party has not been summoned to show cause why a distress should not issue against him. *R. v. Benn*, 6 T. R. 198. A rule calling upon justices to show cause why they should not issue a warrant may be obtained under the 11 & 12 Vict. c. 44, s. 5, in which case the justices are not liable to be sued for anything which they do in obedience to such rule. Also, by the 6 & 7 Vict. c. 67, s. 3, they cannot be sued for anything done in obedience to a peremptory writ of *mandamus*.

Distress illegally executed.] The parties executing a distress for a poor rate are liable as trespassers if they commit any excess not excused by law. *Bell v. Oakley*, 2 M. & Sel. 259.

CHAPTER XI.

ADMINISTRATION OF POOR LAWS.

SECTION I. *Local Government Board.*

II. *Inspectors.*

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SECTION I.—LOCAL GOVERNMENT BOARD.

Appointment of.] In 1871, by 34 & 35 Vict. c. 70, the old Poor Law Board which was originally constituted in 1835 was abolished, and the supervision which it formerly exercised was transferred to the Local Government Board.

The Local Government Board consists of a president, who may sit in Parliament, and the following *ex officio* members:—The Lord President of the Council, Lord Privy Seal, all the principal Secretaries of State, and the Chancellor of the Exchequer, for the time being.

Powers and Duties of.] The Local Government Board have vested in them all the powers and duties which were vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor, or vested in or imposed on one of the Secretaries of State by the Acts relating to public health, local government, registration of births, &c., drainage, baths and washhouses, recreation grounds, towns improvements, artisans' and labourers' dwellings; or vested in or imposed on the Privy Council by the Acts relating to vaccination and the prevention of disease.

The Board are also to exercise all the powers of a Secretary of State, the Treasury, Board of Trade, &c., under local Acts for sanitary purposes, Baths and Washhouses, Alkali, Metropolis Water, Highway, Turnpike, and Bridges Acts. 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. 3.

The Board are to exercise and perform all such powers and duties in the like manner and form as the same were exercised and performed by the authorities in whom the same were then vested respectively. 34 & 35 Vict. c. 70, s. 2.

In the construction of any Act of Parliament passed before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers transferred to the Local Government Board, the name of such Board is to be substituted for the Poor Law Board. Sect. 7.

The Board have power to repeal or alter local Acts which relate to the poor or to the same subject matters as the Public Health Act, 1875, by provisional orders. 30 & 31 Vict. c. 106, s. 2; 42 & 43 Vict. c. 54, s. 9; 38 & 39 Vict. c. 55, s. 303. All duplicate returns relating to rates are to be sent to the Board. 34 & 35 Vict. c. 70, s. 8.

Every general order of the Board made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, are to be published in the *London Gazette*, and when so published are to take effect without any further proceeding, and as regards any single order of the Board it is not necessary to send a copy thereof to the clerk to the justices of the petty sessions. 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. 3.

As to the powers of the Board as to loans to local authorities, see 38 & 39 Vict. c. 89, s. 36; 41 & 42 Vict. c. 18, s. 4; and 41 & 42 Vict. c. 74, s. 49, *post*, p. 304.

Certiorari.] No writ of *certiorari* to remove into the Queen's Bench Division any order, rule, or regulation of the Local Government Board can be granted unless applied for within twelve months next after the day when the copy thereof has been sent in the manner required by the several statutes in that behalf. 12 & 13 Vict. c. 103, s. 13; 4 & 5 Will. 4, c. 76, s. 105.

The Board is to make annually a general report of their proceedings, which is to be laid before Parliament. 10 & 11 Vict. c. 109. Sect. 13.

To summon Witnesses.] The Board, by summons under their

seal, may require the attendance of all persons, upon any matter connected with the execution of the powers vested in them, and may make inquiry and require returns, enforce the production of books, &c., and administer oaths or declarations. But no person can be required to go more than ten miles from his place of abode, or to produce any title deeds not being the property of any parish or union. Sect. 11.

To make Rules.] The Board are authorized to make rules, orders, and regulations for the management of the poor; the government of workhouses, and the education of the children therein; for apprenticing the children of poor persons; for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing and allowing of accounts, and making and entering into contracts in all matters relating to such management and relief, or to any expenditure for the relief of the poor, and for carrying the Act into execution, and from time to time to vary or rescind the same; but they cannot interfere in any individual case for the purpose of ordering relief. 4 & 5 Will. 4, c. 76, s. 15; 10 & 11 Vict. c. 109, s. 14.

They may also make rules, &c., for the management and government of houses where poor persons are lodged, &c., for hire or remuneration, under any contract entered into by the proprietor, &c., of such house, or on his behalf, with any guardians, overseers, or others having the management of the poor in any union or parish, or for the education of poor children therein. 12 & 13 Vict. c. 13, s. 1.

These rules are to be directed to the manager, &c., of the establishment. Sect. 3. The Board may prohibit the reception of poor in such houses; sect. 4; or may remove any officer, &c., of such house; sect. 5; and may regulate the contracts; sect. 6; and appoint inspectors. Sect. 7.

The Board are to make all such rules, &c., under their seal, except such as are intended only for their own guidance or procedure, or for the guidance or procedure of any persons appointed or employed by them for the business of their office. 10 & 11 Vict. c. 109, s. 14. The general orders of the Local Government Board are to be laid before Parliament on publication. 31 & 32 Vict. c. 122, s. 1.

A written or printed copy of every rule, &c., relating to relief

of the poor, sealed or stamped, must be sent to the overseers, the guardians, and the clerk to the justices of the petty sessions for the division within which the parish or union is situate, and no rule, &c. (except orders made in answer to statements and reports authorized to be made by overseers and guardians), is to be in force until fourteen days after the copies of them have been so sent; and disallowance or revocation is to be notified in the same manner. The persons to whom they are sent are to make them public, and to allow them to be inspected, and to furnish copies of them at specified rates. 4 & 5 Will. 4, c. 76, ss. 18, 20; 31 & 32 Vict. c. 122, s. 2, *ante*, p. 298. See as to the proof of sending the rules, 7 & 8 Vict. c. 101, s. 72.

Every order of the Board suspending or dismissing any paid officer from the exercise of his office, in which the Board declare that the urgency of the case requires that such order should take effect within fourteen days, is to come into force at such time as the Board in such order direct. 5 & 6 Vict. c. 57, s. 4.

Acts done in conformity with any order of the Board by the persons to whom they are addressed are valid, notwithstanding the period of fourteen days from the sending copies of them has not elapsed. 12 & 13 Vict. c. 103, s. 12.

Every rule, &c., which, at the time of issuing the same, is directed to and affects more than one union, is to be deemed a general rule; and every rule, &c., made to vary or rescind a general rule, whether it be directed to or affect one or more than one union, is also to be deemed a general rule. 10 & 11 Vict. c. 109, s. 15.

If the Queen in council disallows any general rule, or any part thereof, it is to cease to have validity, except as to acts already done under it. 10 & 11 Vict. c. 109, s. 17.

Copies of the rules printed by the Queen's printer are, after fourteen days from their date, to be received in evidence. 7 & 8 Vict. c. 101, s. 71.

To form Unions.] By 4 & 5 Will. 4, c. 76, s. 26, the Board may, by order under their hands and seal, declare so many parishes as they think fit to be united for the administration of the laws for the relief of the poor; and such parishes are thereupon to be deemed an union, and the workhouses of such parishes are to be for their common use.

Whenever the whole of any parish or parishes is situated at a

greater distance than four miles from the place of meeting of the Board of Guardians of the union of which such parish or parishes form part, the Board, on the application of the Board of Guardians, may form such parish or parishes into a district, and direct the said guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the said guardians thereon. 5 & 6 Vict. c. 57, s. 7.

By 4 & 5 Will. 4, c. 76, s. 39, an implied power is given to the Board to order that the poor laws shall be administered by a Board of Guardians in a single parish.

This cannot, however, be done where the administration of the poor laws in the parish is already vested in a Board under a local Act. *R. v. Poor Law Commissioners*, 6 A. & El. 1. But such a parish may be included in an union; *R. v. Poor Law Commissioners*, 6 A. & E. 561; but not without the consent of its guardians, if it has a population exceeding 20,000. 7 & 8 Vict. c. 101, s. 64.

By 4 & 5 Will. 4, c. 76, s. 109, the word "union" includes any number of parishes united for any purpose whatever under this Act, or incorporated for the relief or maintenance of the poor under any local Act. When a union is formed out of parishes, the last acting guardians, &c., are to continue to administer relief until guardians are elected. 33 Vict. c. 2, s. 5; 32 & 33 Vict. c. 63.

Expenses in Common.] By 4 & 5 Will. 4, c. 76, s. 28, the expenses to be incurred for the common use and benefit of the parishes so united are to be calculated and assessed on the average annual expense of each parish for the relief of the poor for three years, ending on the 25th of March next preceding the inquiry; and the Board may, from time to time, upon the application of the guardians or overseers, or without it, order fresh averages to be taken for the future assessment of such parishes.

Parishes in unions under 4 & 5 Will. 4, c. 76, are to contribute to the common fund according to the annual rateable value of the assessable property in such parishes respectively. 24 & 25 Vict. c. 56, s. 9.

The guardians are to compute the amount of contribution to the common fund from the several parishes by taking the annual rateable value of such property in every parish of the union from the approved valuation lists. 25 & 26 Vict. c. 103, s. 30.

Divided Parishes.] Where any parish is divided so as to have its parts, or any of them, isolated in some parishes, or otherwise detached, the Local Government Board may, after local inquiry, make an order either for constituting separate parishes out of the divided parish, or for amalgamating some of the parts thereof with the parish or parishes in which the same may be locally included, or to which they may be annexed, and providing where requisite for a change of the county of the parish or part of a parish. 39 & 40 Vict. c. 61, s. 1.

If one-tenth of the ratepayers object, the order is to be provisional only. Sect. 2.

The order is not to affect the ecclesiastical divisions and municipal boundaries. Sect. 4.

If the parish affected by the order is included in a highway district, its condition therein and the appointment of the waywarden thereof is to be changed according to the terms of the order. Sect. 5.

Overseers are to be appointed for the parish so created, and are to recover any arrears of rates. The inhabitants are to meet in vestry, as in the case of any ordinary parish. Sect. 6.

Provision is made for compensation to persons affected by the order. Sect. 7.

Such order is not to affect any charitable endowment for the benefit of a divided parish. Sect. 9.

And see 20 Vict. c. 19 ; 30 & 31 Vict. c. 106, s. 35 ; 32 & 33 Vict. c. 63, s. 4 ; 42 & 43 Vict. c. 54, ss. 1—7.

Combination of Unions.] Where on any representation it appears to the Local Government Board that the combination of two or more unions, for any purpose connected with the administration of the relief of the poor, would tend to diminish expense, or otherwise be of public or local advantage, the Board may, with the consent of the guardians of the unions affected, make an order for combining such unions, and for constituting a joint committee of the guardians of each of them for the execution of the purposes named in the order.

Dissolution of Unions.] The Boards are authorized, by order under their hands and seal, to dissolve unions and to separate parishes from or add them to such unions, and to cause a board of guardians to be elected for any single parish so separated from an union. 4 & 5 Will. 4. c. 76, s. 32 ; 7 & 8 Vict. c. 101, s. 66.

If the Local Government Board think it expedient for rectifying, or simplifying, the areas of management or otherwise for the better administration of the relief of the poor, they may dissolve any union, whether formed under 4 & 5 Will. 4, c. 76, or otherwise. The order for dissolution is not to be made until after an inquiry has been held in some one of the unions to be affected after public notice. 39 & 40 Vict. c. 61, s. 11.

Persons acting as guardians or managers, at time of dissolution, are to continue in office to wind up accounts. 33 Vict. c. 2, s. 1.

Changing Name.] The Local Government Board, may, by their order, change the name of any union. 39 & 40 Vict. c. 61, s. 13.

Extra-parochial Places.] Such places are for all civil parochial purposes to be annexed to and incorporated with the next adjoining parish with which it has longest common boundary. 31 & 32 Vict. c. 122, s. 27; 42 & 43 Vict. c. 34, s. 6.

Building or Enlarging Workhouses.] The Board, by writing under their hands and seal, and with the consent of a majority of the guardians of an union, or of the ratepayers and owners of property in a parish not having a workhouse, may order the overseers or guardians to build one. 4 & 5 Will. 4, c. 76, s. 23; see *Reg. v. Poor Law Commissioners*, 3 Q. B. 325; *Reg. v. Poor Law Commissioners*, 9 Q. B. 291. Or, by sect. 25, where there is already a workhouse, the Board may order it to be enlarged or altered, without such consent. 12 & 13 Vict. c. 103, s. 18.

By 30 & 31 Vict. c. 106, s. 13, guardians and managers have power, with the approval of the Local Government Board, to hire or take on lease, temporarily, or for a term of years not exceeding five, any land or buildings for the purpose of the relief or employment of the poor, and the use of the guardians and their officers.

By 42 & 43 Vict. c. 54, s. 11, guardians may borrow money for furnishing workhouses.

Inquiries as to Parochial Property.] By sect. 85, the Board may require from all persons in whom any parochial property or funds held in trust for or applicable to the relief of the poor are vested, or who are in the receipt of the rents and profits thereof, an account in writing of the place where such property is situate, or in what mode, or on what security, such funds are invested,

with details of the rents, profits and income, and of the appropriation of the same; this statement is to be open to the inspection of the owners of property and ratepayers in the parish.

As to Apprentices.] The Board may, by order under their hands and seal, prescribe the duties of masters to whom poor children are apprenticed, and the terms and conditions to be inserted in the indentures. 7 & 8 Vict. c. 101, s. 12.

School Districts and Asylums.] The Board may, by order under their hands and seal, combine parishes and unions into school districts for the management of infant poor, not above the age of sixteen, who are chargeable, orphans, or deserted by their parents, or whose parents or guardians consent to their being placed there. But no parish is to be included in such a district, any part of which is more than fifteen miles from any other part of such district, except with the consent of the guardians. 7 & 8 Vict. c. 101, s. 40; 11 & 12 Vict. c. 82, s. 1; see 13 & 14 Vict. c. 11.

Loans to Poor Law Unions.] See 30 Vict. c. 6, s. 1; 32 & 33 Vict. c. 102, s. 37; 34 Vict. c. 11; 35 Vict. c. 2, guardians with the leave of the Local Government Board may borrow money for valuation expenses. 27 & 28 Vict. c. 39, s. 8.

Persons who have made advances to unions and parishes, under certain circumstances beyond the borrowing powers, may be reimbursed by leave of the Local Government Board. 35 Vict. c. 2, s. 4.

SECTION II.—INSPECTORS.

Appointment of.] By the 10 & 11 Vict. c. 109, s. 19, the board are, by order under their seal, from time to time to appoint inspectors, to be allowed by the Lords of the Treasury, to assist in the execution of the Acts in force for the relief of the poor, and are to assign to them such duties as they think fit; and they may by a like order remove any of the inspectors and appoint others in their stead; the inspectors are to be paid a salary regulated by the Lords of the Treasury.

Duties of.] By sect. 20, the inspectors are entitled to visit and inspect workhouses and places where paupers are lodged, and to attend boards of guardians and parochial and other meetings held for the relief of the poor, and to take part in the proceedings,

but not to vote. They may also summon witnesses before them. for the purpose of being examined on any matter concerning the administration of the poor laws, or of producing and verifying upon oath books, &c., relating to such matter, and not involving any question of title to lands, &c., not being the property of a parish or union, and may examine them on oath or declaration; and their summonses are to be obeyed in like manner as those of the Board, but no person is to be required to travel more than ten miles from his place of abode. Sect. 21.

Special Inquiries.] By sect. 22, whenever it seems fitting to the Board, they, with the consent of the Lords of the Treasury, may appoint an inspector for the purpose of conducting any special inquiry for a period not exceeding thirty days, and may delegate to him all such of the powers of the Board as they may deem necessary or expedient for summoning witnesses and conducting such inquiry.

If any person is charged with any misconduct in a matter relating to the administration of the poor laws, and if a special inquiry be directed to be made into such charge, the person bringing the charge is to be entitled to make it by counsel or solicitor, and the person charged is to be entitled to make his defence by counsel or solicitor; but this is not to release any person charged with misconduct, or bringing a charge of misconduct, from the liability to be himself examined at the inquiry in respect of the matter of such charge. 5 & 6 Vict. c. 57, s. 2.

Inspectors of Houses not being Workhouses.] By the 12 & 13 Vict. c. 13, s. 7, the Board may appoint persons, temporarily or permanently, to visit and inspect houses or establishments where poor are maintained under contract, and the poor therein, and to report to the Board; such persons are to be paid, by the overseers or guardians of the parishes or unions whose poor are maintained there, such remuneration as the Board may direct.

SECTION III.—BOARDS OF GUARDIANS.

In Unions.] By 4 & 5 Will. 4, c. 76, s. 38, when a union has been formed by the Board, a Board of Guardians for such union is to be chosen, by whom the workhouses are to be governed and relief administered. The Board are to determine the number and

prescribe the duties of the guardians and to fix a qualification, without which no person shall be eligible as guardian ; the qualification to consist in being rated to the poor rate of some parish or parishes within the union, but not so as to require a qualification exceeding the annual [rateable value. 30 & 31 Vict. c. 106, s. 4] of 40*l*. But one guardian at least must be elected for each parish in the union.

The Local Government Board, having due regard to the relative population and circumstances of any parish in a union, may alter the number of guardians to be elected for it. 7 & 8 Vict. c. 101, s. 18. The Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein ; and every such ward is, for the purposes of such election, to be deemed a separate parish, except so far as the Board may otherwise order. 39 & 40 Vict. c. 61, s. 11.

No person is qualified to nominate a guardian for any ward for which he is not qualified to vote. 30 & 31 Vict. c. 106, s. 6.

No person can be elected for more than one ward ; and if a person is nominated for two or more wards, notice is to be given him, and he is to elect for which he will stand. 7 & 8 Vict. c. 101, s. 20. By the 5 & 6 Vict. c. 57, s. 14, no assistant overseer or paid officer, or person who, having been a paid officer, has been dismissed from office within five years, is capable of being a guardian ; nor is any person receiving a fixed salary or emolument from the poor rates in any parish or union capable of being a guardian in that parish or union.

How elected.] The guardians are to be elected by the ratepayers and owners of property in the parish. 4 & 5 Will. 4, c. 76, s. 38. Each owner and each ratepayer to the value of less than 50*l*. is to have one vote ; of 50*l*. and under 100*l*., two votes ; 100*l*. and under 150*l*., three votes ; 150*l*. and under 200*l*., four votes ; 200*l*. and under 250*l*., five votes ; 250*l*. or upwards, six votes. 7 & 8 Vict. c. 101, s. 14.

No person entitled to vote can give, in the whole of the wards into which a parish may be divided, a greater number of votes than he would have been entitled to have given if the parish had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward ; but any such ratepayer may, by written notice to overseers before

the nomination day, elect in what ward or wards he will vote in the ensuing year, and determine what proportion of votes, having regard to the property situated therein, he will give any one or more such wards ; and if he do not give such notice his vote is only to be taken for the ward in which he resides, or, if he do not reside in the parish, for that ward in which the greater part of such property according to its annual rateable value is situated. 30 & 31 Vict. c. 106, s. 6.

When the owner is occupier also, he may vote as well in respect of his occupation as his ownership, and the amount of the assessment for the time being of any property belonging to such owner is to be deemed the annual value ; owners also may vote by proxy. But no ratepayer is to vote unless he has been rated to the poor for the whole year preceding his so voting, and has paid the poor rates for one whole year, as well as those due at the time of voting, except such as have become due within the six months immediately preceding. Nor is any owner to vote during the year following the 25th March unless he shall, previously to the 1st February preceding, have given his name and address in writing, and the description of the property as owner whereof, or proxy for the owner whereof, he claims to vote, and of the nature of his interest or estate therein, and the amount of rent service received or paid in respect thereof, and the persons from or to whom it is received or paid.

No such statement by an owner is valid unless it contains an address for service within the parish in respect of which such owner claims to vote, and all voting papers and notices left at such address are deemed to be sufficiently served on such owner. Notice of change of such address is to be given. 39 & 40 Vict. c. 61, s. 40.

If he claims to vote as proxy, he must also deliver the writing appointing him such proxy, or an attested copy thereof, to the overseers fourteen days before the day of voting, who are to enter the names and addresses of such owners and proxies with their assessments. Corporations and companies are to vote by an officer whose name is to be entered in the same manner. The votes are to be in writing, and collected and returned as the Board direct. 4 & 5 Will. 4, c. 76, s. 40, and 7 & 8 Vict. c. 101, ss. 14, 15, 16. See *Reg. v. Tewkesbury, Mayor of*, L. R. 3 Q. B. 629 ; 37 L. J. Q. B. 288.

No person can vote as proxy for more than four owners in one

parish (except he be steward, bailiff, land agent or collector of rents of the owners for whom he is appointed to vote); no appointment of proxy is to remain in force for more than two years (except where an owner appoints his tenant, bailiff, steward, &c., as his proxy, in which case it is to be in force so long as the proxy continues tenant, &c., and the appointment is unrevoked). The overseers are to enter in a book the names and addresses of the persons claiming to vote as owners or proxies, and they may be objected to by other claimants or ratepayers, and such objections are to be heard and determined by the clerk to the guardians, or other person appointed. 7 & 8 Vict. c. 101, s. 15.

No owner can vote by proxy at the election of a guardian for any parish or ward therein, if at the time of such election he is residing within such parish. 30 & 31 Vict. c. 106, s. 5.

No person can vote in the election of a guardian or in the election to an office under the provisions of any statute who is in receipt of relief given to himself or his wife or child, or has been in receipt of such relief on any day during the year last preceding such election. 39 & 40 Vict. c. 61, s. 18.

Married women cannot vote at an election of guardians though their names may be on the rate book. *R. v. Harrold*, 41 L. J. Q. B. 173. An alien cannot vote. 32 & 33 Vict. c. 14, s. 2.

The Local Government Board, by a general order of the 14th February, 1877, have made the following regulations as to the mode of conducting the election of guardians.

Art. 3. Overseers of every parish to enter in 'a book the names and addresses of the owners and proxies who send statements of their claims to vote, and the assessment of the poor rate on the property in respect whereof they claim to vote. The book is to be kept in the form No. 1 in the schedule.

Art. 4. Overseers, before 26th of March in every year, to distinguish in rate book the name of every ratepayer in their parish who has been rated to poor relief for the whole year immediately preceding that day, and has paid poor rates for one whole year excepting those made, or become due, within six months immediately preceding that day.

Art. 5. Clerk to be returning officer at every annual election of guardians, who may appoint some one else in his absence.

Art. 6. Guardians to appoint assistants to returning officer.

Art. 8. Overseers of every parish and every officer having custody

of poor rate books to attend the returning officer for purpose of election of guardians, and produce to him all books, &c., relating to poor rates with registers of owners and proxies, &c.

Art. 9. Returning officer to prepare and sign a notice in form No. 2, which is to be published on or before 15th of March, by affixing a printed copy to gate of every workhouse in a union or separate parish, or, where no workhouse, to gate of building in which board room of guardians is comprised; and be renewed, if necessary, until 9th of April. Printed copies also to be affixed to places where notices of parochial business are usually affixed.

Whenever day appointed for any Act relating to election of guardians falls on a Sunday or Good Friday, such Act is to be performed on following day, and each subsequent proceeding postponed a day.

Art. 10. Any person entitled to vote for any parish, united parishes or ward may nominate for the office of guardian thereof, himself, if legally qualified, or any other qualified persons, not exceeding the number of guardians to be elected.

Art. 11. Every nomination in form No. 3, signed by nominator only, to be delivered through post, or otherwise, to returning officer after 14th and on or before 26th of March, between nine in the morning and eight in the evening.

Art. 12. On 27th of March, or as soon after as practicable, the returning officer to make out list in form No. 4, containing names and residence and calling of persons nominated, and also his opinion as to the invalidity of any nomination, and place a copy thereof in the board room and on gate of every workhouse, &c.

Art. 13. If a number of persons duly nominated is the same or less than the number of guardians to be elected, such persons, if duly qualified, are deemed to be elected, and are to be certified as such by returning officer.

Art. 14. But if a greater number be nominated, the returning officer to make out list in form No. 5 of persons nominated, &c., and his opinion as to invalidity of any nomination. Such list to be kept in board room until close of election; voters entitled to inspect and copy between nine in the morning and eight in the evening, except on Sunday, or during a meeting of the Board of Guardians.

Art. 15. When such list made, voting papers in form No. 6 to be prepared with names in alphabetical order of persons duly nominated.

Art. 16. On 7th of April one of such papers to be delivered to each voter.

Art. 17. A person nominated on giving one day's notice to returning officer may send an agent to accompany each person sent to deliver or collect voting papers.

Art. 18. Guardians to provide collectors of voting papers with a box or bag with opening for reception of the papers, which is to be delivered by the returning officer locked and to be returned to him on the day of the collection, and only to be opened at the casting up of the votes.

Art. 19. If a person put in nomination tender his written refusal to serve, and in consequence the remaining number of qualified persons duly nominated are the same as or less than number of guardians to be elected, such persons are deemed to be elected.

Art. 20. Each voter to write his initials in proper column of voting paper against name or names of person or persons (not exceeding the number to be elected) for whom he intends to vote, and sign his name at foot of voting paper; and when a person votes as proxy he is to write his own initials and sign his own name, and state in writing name of person for whom he is proxy. A voter who cannot write is to affix his mark at foot of paper in presence of a witness, who is to attest the affixing thereof, and write name of voter against such mark, as well as the initials against names of persons voted for.

Art. 21. If directions in Art. 20 are not complied with, or if any voting paper be not delivered or collected, such paper to be omitted in the calculation of votes except in cases specified in following provisoes.

Provided that every voter who has not on the 7th of April received a voting paper, on application to the returning officer before mid-day on 9th of April, is entitled to receive a voting paper, and fill up the same in his presence and deliver it then to him.

Provided also, that in case any voting paper through the default of the returning officer or his agent has not been collected, the voter in person may, before mid-day on 9th of April, deliver the same to such officer.

Art. 22. Returning officer to cause voting papers to be collected on 8th of April.

Art. 23. Returning officer on 9th of April and following days to attend board room, and ascertain validity of votes by an exami-

nation of rate books, &c., and of such persons as he see fit, and enter in a poll book in form No. 7, and cast up the valid votes, and ascertain total number given for each person.

Art. 24. Returning officer to allow person nominated or his agent to be present at casting up of votes. Voting papers rejected to be so marked, with the ground of such rejection.

Art. 25. Persons nominated who have received the greatest number of votes to be deemed elected.

Art. 26. Returning officer on the 9th of April to make a list containing names of persons nominated, and of guardians elected, and in case of a contest, of the number of votes given for each in the form No. 8, and sign and certify the same, and deliver such list, together with the poll book and all the nomination and voting papers to Board of Guardians at their next meeting, who are to preserve the same for two years.

Art. 27. Printed copies of such list to be sent to overseers of every parish in the union.

Art. 28. Overseers to have copies affixed to usual places for affixing parish notices.

Art. 29. When a person is certified as having been elected as guardian, he is to have a notice sent him in form No. 9.

Art. 30. Papers and books delivered as provided by Art. 26, are during the next six months to be open for the inspection of persons nominating or nominated and their agents between ten and six o'clock.

Art. 31. In case of decease, necessary absence, refusal, or disqualification to act during the election of returning officer or other person employed, the delivery of papers, &c., to successor of such person to be valid and effectual.

Art. 32. Guardians to pay returning officer for his duties in election and remuneration of persons employed to assist him a sum not exceeding 20*l*.

Art. 33. Where voting papers have been delivered in conformity with Art. 16, guardians to pay returning officer in addition the sum of threepence in respect of each separate assessment to current poor rate in parish or ward, or united parish, up to number of 500 assessments, and twopence for each assessment beyond such number.

Where voting papers prepared under Art. 15, but not delivered in consequence of a contest becoming unnecessary, the guardians

to pay returning officer in addition one penny in respect of each separate assessment.

Art. 34. Guardians to defray cost of providing the several forms, and may also defray cost of a supply of nomination papers.

Art. 35. In a union, the cost of providing bags or boxes, as well as several forms, except the voting papers and poll books, together with any payment under Art. 32, to be charged to common fund.

The cost of providing voting papers and poll books, together with any payment which may be made to returning officer under Art. 32, to be charged to parish or ward in respect of which the expenses have been incurred; and in case of united parishes, to be charged to them in proportion to number of separate assessments to current poor rate in each parish.

Art. 36. All foregoing provisions to apply to any election, other than annual, which may take place during currency of any year under an order of the Local Government Board except as regards the dates and the notice of the election.

The Board may, with the consent of the majority of the owners and ratepayers of a parish or union, alter the mode of appointment, removal and period of service of the guardians. 4 & 5 Will. 4, c. 76, s. 41.

A *quo warranto* will lie in respect of the office of guardian. *R. v. Hampton*, 6 B. & S. 923; 13 L. T. 431.

No defect in the qualification or election of any person acting as a guardian at a Board of Guardians, the majority of persons assembled at which are entitled to act as guardians, is to be deemed to vitiate or make void any proceedings of such Board in which he has taken part. 5 & 6 Vict. c. 57, s. 13.

The qualification or validity of the election of a guardian is not to be questioned in any proceeding more than twelve months after the election or disqualification. 10 & 11 Vict. c. 109, s. 25.

Malpractices at Elections.] If any person, pending or after the election of guardians, wilfully, fraudulently, and with intent to affect the result of the election, fabricates in whole or in part, alters, defaces, destroys, abstracts or purloins, any nomination or voting paper used therein; or personates or falsely assumes to act in the name or on behalf of any person entitled to vote; or interrupts the distribution or collection of voting papers; or distributes or collects the same under a false pretence of being lawfully

authorised to do so, is liable to imprisonment with hard labour for three months. 14 & 15 Vict. c. 105, s. 3.

Personating an elector who is dead, and signing the voting paper in his name, is not an offence under this section. *Whiteley v. Chappell*, 38 L. J. M. C. 51; 19 L. J. 355.

When elected.] The guardians elected are to continue in office until the 15th of April inclusive in the year next after their election, notwithstanding their successors have been elected before that day; and on the 25th of March, or if that day should fall on a Sunday or Good Friday, then on the day next following, or within forty days after the 25th of March in every year, others are to be chosen. In the event of a vacancy by death, removal, or resignation, or refusal or disqualification to act, or in case the full number of guardians are not duly elected, the remaining members of the Board, being not less than three, are to continue to act until the next election, or until the completion of the Board. 4 & 5 Will. 4, c. 76, s. 38; 5 & 6 Vict. c. 57, s. 12; 7 & 8 Vict. c. 101, s. 17; 14 & 15 Vict. c. 105, s. 2. From and after the 15th of April in each year the newly-elected guardians are to act for the ensuing year. 14 & 15 Vict. c. 105, s. 2.

If *no person* is elected for the office of guardian in any parish at any annual election of guardians, the persons elected for the previous year may continue to act as guardians, until the next annual election. 5 & 6 Vict. c. 57, s. 10.

Refusal to serve, or Resignation.] If any person put in nomination tenders to the officer conducting the election his refusal in writing to serve such office, the election of guardians, so far as regards such person, is to be no further proceeded with. Sect. 9.

The Board may accept the resignation of any person elected as a guardian, tendered for any cause which the Board may deem reasonable; and in every case of omission to elect, or of vacancy in the Board by death, resignation or disqualification, the Board are empowered to order a new election for the completion of the Board. Sect. 11.

Ex Officio Guardians.] Every justice of the peace residing in any parish, or extra-parochial place, the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of the union or parish, and acting for the county, riding or division in which such parish or union, or any part thereof, is situated, is an *ex-officio* guardian of

the united or common workhouse, and is, until such Board of Guardians is duly elected and constituted, and also in case of any irregularity or delay in any subsequent election of guardians, to receive and carry into effect the rules, &c., of the Local Government Board; and after such Board of Guardians has been elected and constituted, every such justice is to be *ex-officio* a member of such Board, and entitled to act as a member in addition to and in like manner as the elected guardians. 4 & 5 Will. 4, c. 76, s. 38; 7 & 8 Vict. c. 101, s. 24. The term "county" in the above sections includes the county of a town. *R. v. Pearce*, 49 L. T. M. C. 81. No justice of the peace is disabled from acting as a justice at any petty or special or general or quarter sessions in any matter, merely on the ground that he is an *ex-officio* member of any Board of Guardians complaining, interested or concerned in such matter, or has acted as such at any meeting of such board. 5 & 6 Vict. c. 57, s. 15. But see *R. v. JJ. Weymouth*, L. R. 4 Q. B. D. 332; 40 L. T. 748.

In Single Parishes.] By 4 & 5 Will. 4, c. 76, s. 39, if the Local Government Board direct that the laws for the relief of the poor of any single parish be administered by a Board of Guardians, such Board is to be elected, constituted and entitled to act for such single parish in all respects as is enacted in respect to a Board of Guardians for united parishes.

Guardians a Corporation.] The guardians are a corporation, called "The Guardians of the poor of the — union, or of the parish of — in the county of —," and as such may accept, take and hold, on behalf of such union or parish, any buildings, lands or hereditaments, goods, effects or other property, and may use a common seal; and by that name may bring actions, prefer indictments, and sue and be sued; and in all actions and indictments the property may be stated to be that of the guardians of the — union, or of the parish of —. 5 & 6 Will. 4, c. 69, s. 7; 5 & 6 Vict. c. 57, s. 16.

Powers, how exercised.] No *ex officio* or other guardian has power to act, except as a member and at a meeting of the Board, unless otherwise ordered by the Local Government Board, or except for the purpose of consenting to the dissolution or alteration of the union, or any addition thereto, or to the formation of any union for settlement or rating; and no act of such meeting is valid unless three members are present and concur therein. 4 & 5 Will. 4, c. 76, s. 38. In case of an equality of votes upon any question at a

meeting, the presiding chairman has a second or casting vote. 12 & 13 Vict. c. 103, s. 19.

The General Order of 24th July, 1847, Art. 37, *et seq.*, regulates the mode of proceedings at meetings of the Board.

Admission of Documents in Evidence.] Wherever a Board of Guardians makes any order, or prefers any complaint, claim, or application, before justices or otherwise, a copy of the minute of such resolution, purporting to be signed by the presiding chairman of such Board, and to be sealed with their seal, and to be countersigned by their clerk, is to be taken to be sufficient proof of the directions respecting such order, complaint, &c., having been given; and whenever it is necessary to prove to what parish a pauper has become chargeable, a certificate, in the form in the schedule, of such pauper having so become chargeable, purporting to be signed, sealed and countersigned as aforesaid, is to be sufficient proof of the truth of all the statements contained in such certificate, without proof of the signatures or the official characters of the persons signing, or of the seal, or the meeting; and in all cases in which the guardians of any parish or union are empowered to make any application or complaint, or to take any proceedings, before any justices at petty or special or general or quarter sessions, any officer of such guardians empowered by the Board, by an order in writing under the hand of the presiding chairman of such Board, and sealed with the common seal of such guardians, may make such application or complaint, or take such proceedings, on behalf of such guardians, as effectually, to all intents and purposes, as if the same were made or taken by such guardians, or any of them, in person. 5 & 6 Vict. c. 57, s. 17; 7 & 8 Vict. c. 101, s. 69; see *Reg. v. High Bickington*, 8 Q. B. 889.

Contracts and Payments by.] Any contract entered into by or on behalf of a parish or union, relating to the maintenance, &c., or general management of the poor, which is not in conformity with the rules, &c., of the Local Government Board, or otherwise sanctioned by them, is to be voidable, and, if the Local Government Board so direct, null and void; and all payments made under a contract so declared void are to be disallowed. 4 & 5 Will. 4, c. 76, s. 49. The order of 24th July, 1847, Arts. 44 *et seq.*, provides for the mode of making such contracts.

55 Geo. 3, c. 137, s. 6, and 4 & 5 Will. 4, c. 76, ss. 51 and 77, impose penalties on guardians and others concerned in the adminis-

tration of the poor laws, who are concerned in contracts for, or who supply for their own profit goods which are furnished for the relief of the poor.

These statutes so far as they affect churchwardens and overseers are repealed by 31 & 32 Vict. c. 122, s. 44; but a guardian is still prohibited. *Davies v. Harvey*, W. N. 1874, p. 126.

If the goods are supplied by a guardian without profit to himself it appears that he incurs no penalties. *Skinner v. Buckee*, 3 B. & C. 6; *Barber v. Waite*, 1 A. & E. 514.

As to the necessity for contracts by guardians being under seal, see *Paine v. Strand Union*, 15 L. J. M. C. 89; *Haigh v. North Bierley*, 28 L. J. Q. B. 62; *Saunders v. St. Neot's*, 15 L. J. M. C. 104; *Clark v. Cuckfield*, 21 L. J. Q. B. 349; *Nicholson v. Bradfield*, 35 L. J. Q. B. 176.

All payments, &c., made by guardians and charged upon the poor rates contrary to the provisions of the Act, or at variance with any rule, &c., of the Local Government Board are declared illegal, and are to be disallowed. 4 & 5 Will. 4, c. 76, s. 89.

Duties—Vaccination.] By 30 & 31 Vict. c. 84, s. 1, the guardians of every union or parish are to divide their union or parish into vaccination districts, or to consolidate or alter them, subject to the approval of the Local Government Board. The Board have the same powers with respect to guardians and vaccination officers in matters relating to vaccination as they have with respect to guardians and officers of guardians in matters relating to the relief of the poor. 34 & 35 Vict. c. 98, s. 5; 37 & 38 Vict. c. 75.

Subscribing to and using Hospitals.] By the 14 & 15 Vict. c. 105, s. 4, guardians may, with the consent of the Local Government Board, pay out of the funds of the union or parish any sum, as an annual subscription towards the support of a public hospital or infirmary for the reception of sick, diseased, disabled or wounded persons, or persons suffering from any permanent or natural infirmity.

By 32 & 33 Vict. c. 63, s. 16, guardians may, with the consent of the Local Government Board, make arrangements with any public general hospital or dispensary situated within the limits of their parish or union, to receive and treat pauper patients, on terms to be arranged with the sanction of the Board.

By 42 & 43 Vict. c. 54, s. 10, the guardians may, with such consent, subscribe towards any asylum or institution for persons who are blind, deaf, or dumb, or suffering from any permanent or natural

infirmity, or for providing nurses, or for aiding girls or boys in service, or towards any other asylum or institution which appears to guardians to be calculated to render useful aid in administration of relief of the poor.

Recreation Grounds.] Overseers or churchwardens may as trustees hold lands conveyed to them as open public grounds for recreation. 22 Vict. c. 27. Parish lands may be conveyed by parish officers for such purpose with consent of vestry and Local Government Board, s. 4.

Rural District Authorities.] By 38 & 39 Vict. c. 55, s. 9, the area of any union which is not coincident in area with an urban district, nor wholly included in an urban district, with the exception of those portions (if any) of the area which are included in any urban district, is to be a rural district, and the guardians of the union are to form the rural authority of such district.

Costs of Proceedings by.] The guardians may pay, out of the funds in their hands, the costs of the apprehension and prosecution of persons charged with deserting their families; with disobedience to the rules of the Local Government Board; with offences in or running away from workhouses, and carrying away goods belonging thereto; with neglecting or disobeying the orders of justices; with assaulting persons engaged in administering the poor laws; or with fraudulently obtaining, &c., any property connected with the relief of the poor; or of prosecuting any officer employed in the administering the poor laws for a neglect or breach of duty. They may also, subject to the approval of the Local Government Board, pay the costs of all legal proceedings taken by an auditor for the protection of the poor rates or property of any parish, union, &c., and charge them to the common fund of the union, or to the parish. 7 & 8 Vict. c. 101, s. 59. As to the time for the payment of debts incurred by Boards of Guardians, see 22 & 23 Vict. c. 49, and *Attorney-General v. Wilkinson*, 29 L. J. Ch. 41; *Baker v. Billericay*, 33 L. J. M. C. 409.

Guardians of unions and parishes may pay, out of the funds under their control for information required for the effectual discharge of their duties.

The amount payable to the officers of guardians for such information may be settled by the Local Government Board. 39 & 40 Vict. c. 61, ss. 15, 16.

The other duties of guardians will be found under their proper heads. As to the clerk to the guardians, see *post*, p. 323.

SECTION IV.—DISTRICT AUDITORS.

Appointment of.] The Local Government Board may appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing the accounts which are subject to be audited by district auditors, and may, from time to time, remove such auditors. 42 Vict. c. 6, s. 4.

Assistants.] The Board may, with the consent of the Treasury, appoint persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties. Any person so appointed, subject to any exceptions made by the terms of his appointment, has the same powers and duties, and is subject to the same obligations as the district auditor. The Board may, with the like consent, fix the salary of the person so appointed, which is to be paid out of moneys provided by Parliament. Sect. 4.

Powers and Duties.] The chief duties of the district auditors are to audit the accounts of—

1. Poor Law Guardians, including Rural Sanitary Authorities.
2. Overseers of the poor.
3. Managers of School Districts formed under the Poor Law Amendment Act, 1844.
4. The Metropolitan Asylums Board.
5. Managers of the Metropolitan Sick Asylum Districts.
6. Urban Sanitary Authorities, other than Town Councils.
7. School Boards.
8. Churchwardens, as regards rates levied under the Compulsory Church Rate Abolition Act, 1868.
9. Highway Boards; and
10. Surveyors of Highway Parishes.

The Board may assign to district auditors their duties, and the districts in which they are to act, and may change wholly or in part such duties or districts. Sect. 4.

The Board may make regulations as to the audit of the accounts of a local authority which are liable to be audited. Sect. 5.

Every rate and assessment made and levied by an overseer is to be audited by the district auditor, and is not to be audited in any other way. 39 & 40 Vict. c. 61, s. 37.

The auditor who is authorised to audit the accounts of any guardians, overseers, or officers, may, when authorised by the Local

Government Board so to do, inspect the accounts of such persons. Any person refusing such inspection is liable to a penalty of 5*l*. 29 & 30 Vict. c. 113, s. 7.

Salaries and Expenses.] The whole of the salaries and expenses of auditors are paid out of moneys provided by Parliament; and for the purpose of contributing towards the payment of such salaries and expenses there is charged on every local authority, whose accounts are subject to audit by a district auditor, a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement, which is required to be prepared and submitted by the local authority at the audit. 42 Vict. c. 6, s. 2.

Financial Statement.] When the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority are to submit to the auditor at every audit (other than an extraordinary audit) a financial statement in the prescribed form; one of such duplicates is to have the stamp charged under the Act affixed thereon, which is to be cancelled by the auditor. Sect. 3.

The local authority failing to submit a financial statement are liable to a penalty of 20*l*. Sect. 7.

The Local Government Board, by their orders of 25th of April, 1879, have prescribed the forms of the financial statements.

Audit.] Seven clear days at least before the day fixed for the audit, the overseers, collectors and assistant overseers of every parish are to make up and balance their rate books, which are then to be deposited at the house, within the parish, of one of such overseers, &c., and notice thereof and of the time and place of the audit is to be given; and the books are to be open to the inspection of ratepayers. Fourteen days' notice of the audit is to be sent by the auditor, by post or otherwise, to the overseers [and it is to be advertised in a newspaper circulating in the county. 11 & 12 Vict. c. 91, s. 7.] Every ratepayer may be present at the audit, and may object to the accounts. The auditor may require any person holding or accountable for money, books, &c., relating to the poor rate or relief of the poor, to produce his accounts and vouchers, and to sign a declaration, under a penalty if he refuses. 7 & 8 Vict. c. 101, s. 33.

Except where a party (not being an officer bound to account) is surcharged it is not necessary to prove that the audit was adjourned, and that notice of such adjourned audit was given. 11 & 12 Vict. c. 91, s. 7. If the auditor sees cause to surcharge any person liable

to be surcharged and to whom no notice is required to be given, he is, if the person be not present at the audit, to give notice to him, and adjourn the audit, to allow him to appear and show cause against the surcharge. Sect. 8.

Where any overseer or officer is continuing in office at the time when the accounts are audited, the auditor is to certify as due such sums only as are disallowed or surcharged by him ; but where the term of office of such overseer, &c., has expired, he is to ascertain the balance due on the accounts, together with the sums (if any) disallowed or surcharged, and give credit for all sums proved to have been paid in respect of such balance to the succeeding overseers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit ; and he is to certify, report and recover the balance remaining due after such credit given. 11 & 12 Vict. c. 91, s. 5. Sums paid by overseers to constables by order of justices under 5 & 6 Vict. c. 109, are not to be disallowed. 11 & 12 Vict. c. 91, s. 6.

Bills due to solicitors for parish or union business may be taxed by the clerk of the peace or his deputy, and such taxation is to be evidence of the reasonableness of the amount, but not of the legality of the charge ; if not so taxed, the auditor's decision is final on both grounds. 7 & 8 Vict. c. 101, s. 39. The effect of this section is to take away the *certiorari* given by sect. 35, in the case of an auditor's decision upon a solicitor's bill. *Reg. v. Napton*, 25 L. J., Q. B. 296.

The accounts must be audited once in every half-year. Sect. 38.

Extraordinary Audit.] When the Local Government Board require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation or removal from office, such audit is to be deemed to be an audit within the meaning of the several acts relating to the audit of the accounts of the poor rate, and may be held after three days' notice thereof given in the usual manner. 29 & 30 Vict. c. 113, s. 6.

Recovery of Balances.] When the auditor has certified any money, &c., to be due, he is to report it to the Local Government Board, and the person from whom it is certified to be due is within seven days to pay it to the treasurer of the union or parish, to be applied (in the case of a union) to the use of all or any of the parishes, according as they are interested in it ; and all books, &c.,

and (where there is no treasurer) all sums certified to be due, are to be delivered over or paid, within seven days, to the persons authorised to receive them; if they are not so delivered or paid, the auditor may proceed, as soon as may be, to enforce the delivery or payment; and all sums certified to be due are recoverable from the persons answerable for them, as penalties and forfeitures are recoverable under the 4 & 5 Will. 4, c. 76, and persons refusing to deliver over books, &c., are liable to the penalties imposed by the same Act. 7 & 8 Vict. c. 101, s. 32.

The proceedings may be taken before justices of the county, &c., where the treasurer resides or has his place of business, or where the overseer, &c., resides. 14 & 15 Vict. c. 105, s. 9.

In proceedings by auditors to recover before justices sums certified to be due, it is sufficient for them to produce a certificate of their appointment under the seal of the Local Government Board, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which it relates, and that the sum certified to be due had not been paid within seven days after it was so certified, nor within three clear days before laying the information. A certificate purporting to be signed by the treasurer is sufficient proof of such non-payment. If the sum is proved to have been paid subsequently to such certificate, the auditor's costs are to be paid by the party informed against, unless he gave notice to him of the payment twenty-four hours at least before laying the information. 11 & 12 Vict. c. 91, s. 9. It is the duty of justices to issue a distress warrant if the statutable proof of the surcharge required by this section be complete. *R. v. Finnis*, 28 L. J. M. C. 201; 33 L. T. 146.

The 11 & 12 Vict. c. 43, s. 11, is not to apply to informations by auditors, but such proceedings must be commenced within nine calendar months from the disallowance or surcharge, or, in the event of an appeal, from the determination thereof. 12 & 13 Vict. c. 103, s. 9.

If the auditor proceeds for a penalty for the default of any officer or person to attend an audit, or to produce accounts or vouchers, or to sign a declaration, the costs incurred by the auditor, when not recovered from the defendant, are, if the Local Government Board consent, to be payable to the auditor, and chargeable as costs incurred by him in enforcing the payment of sums certified to be due. Sect. 11.

Remedy for Parties aggrieved.] If any person aggrieved by any allowance, disallowance or surcharge by an auditor requires it, the auditor is to state the reasons for such allowance, &c., in the book of account in which it is made; and every person aggrieved by such allowance may apply to the Queen's Bench Division for a *certiorari* to remove the said allowance, &c.

The auditor's decision upon a joint account may be reversed or remitted by the Court or the Local Government Board, in favour of one or some only of the parties appealing. 39 & 40 Vict. c. 61, s. 38.

The party so aggrieved may, in lieu of applying for a *certiorari*, apply to the Local Government Board to inquire into and decide on the lawfulness of the reasons stated by the auditor, and they may make such order therein as they deem requisite for determining the question—Sect. 36; and they may decide the same according to the merits of the case; and if they find that any disallowance or surcharge was lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that it should be remitted, they may direct it to be remitted, upon payment of the costs (if any) incurred by the auditor or other competent authority in the enforcing such disallowance or surcharge. 11 & 12 Vict. c. 91, s. 4; 29 & 30 Vict. c. 113, s. 5.

Auditors of parish accounts in the metropolis are appointed under 18 & 19 Vict. c. 120, s. 11.

SECTION V.—PAID OFFICERS.

Appointment of.] By 4 & 5 Will. 4, c. 76, s. 46, the Local Government Board may direct the overseers or guardians to appoint paid officers for superintending or assisting in the relief or employment of the poor; and the Board may specify the duties of such officers, and direct the mode of appointment, and the amount of the security to be given by them; they may also regulate their salaries, and such salaries are to be chargeable upon the poor rate, and recoverable against the guardians or overseers.

The giving security is not a condition precedent to the validity of the appointment. *R. v. Patteson*, 4 B. & Ad. 9; and see as to the liability of sureties of officers, *Mills v. Alderbury*, 18 L. J. Ex. 252; *Lichfield v. Greene*, 26 L. J. Ex. 140; *Bedford v. Patteson*, 25 L. J. Ex. 91.

If the Board of Guardians fail for twenty-eight days after receipt

of a requisition of the Local Government Board, ordering them to appoint any officer whom they may be lawfully required to appoint, the Local Government Board may appoint an officer and fix the salary to be paid him by the guardians. 31 & 32 Vict. c. 122, s. 7.

Dismissal.] By sect. 48, the Board may, by their order, remove the master of any workhouse, or other paid officer, upon or without the suggestion of the overseers or guardians; and the person so removed is not to be competent to fill any paid office connected with the relief of the poor without the sanction of the Board. [Such an order may come into operation within fourteen days. See 5 & 6 Vict. c. 57, s. 4.] The Board have an absolute discretion to remove without summoning or hearing the party dismissed. *Ex parte Teather*, 1 L., M. & P. 7.

As to disqualification for a parochial office, see p. 108.

Clerk to Guardians.] A *quo warranto* will lie for this office. *Reg. v. St. Martin's-in-the-Fields*, 17 Q. B. 149. In the election of a clerk to the guardians the chairman ought to vote. *Ibid.* The clerk or other officer to a Board of Guardians, if duly empowered by such Board, may conduct any proceedings on behalf of the Board, before justices at petty sessions, although he is not a solicitor. 7 & 8 Vict. c. 101, s. 68.

Rules of Local Government Board as to paid Officers.] By the Order of 24th July, 1847, it is provided:—

Art. 153. The guardians shall, whenever it may be requisite, or whenever a vacancy may occur, appoint fit persons to hold the under-mentioned offices, and to perform the duties respectively assigned to them.

1. Clerk to the guardians.
2. Treasurer of the union.
3. Chaplain.
4. Medical officer for the workhouse.
5. District medical officer.
6. Master of the workhouse.
7. Matron of the workhouse.
8. Schoolmaster.
9. Schoolmistress.
10. Porter.
11. Nurse.
12. Relieving officer.
13. Superintendent of out-door labour.

And also such assistants as the guardians, with the consent of the Local Government Board, may deem necessary for the efficient performance of the duties of any of the said offices.

Art. 154. The officers so appointed to or holding any of the said offices, as well as all persons temporarily discharging the duties of such offices, shall respectively perform such duties as may be required of them by the rules and regulations of the Local Government Board in force at the time, together with all such other duties conformable with the nature of their respective offices as the guardians may lawfully require them to perform.

The guardians, with the consent of the Local Government Board, may determine the appointment of masters, matrons, schoolmasters, and schoolmistresses of workhouses, and of relieving officers, within the first year of their service, and at any time may dismiss them with the like consent. *Order of Local Government Board*, February 12th, 1879.

SECTION VI.—OVERSEERS.

For what Places appointed.] It has already been observed, that a churchwarden is *virtute officii* an overseer; and it must always be understood that they are included under that general name in treating of the duties, &c., of this office. In any parish the same person may hold jointly the offices of churchwarden and overseer. 29 & 30 Vict. c. 113, s. 12.

By 17 Geo. 2, c. 38, s. 15, when overseers are appointed for a township or place where there are no churchwardens, they may perform all the duties assigned by law to churchwardens and overseers, and are to suffer all penalties for non-performance thereof.

Every parish constituted under the Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), by the order of the Local Government Board, is to be a parish for which an overseer is to be appointed. Sect. 6.

Overseers, when appointed.] The appointment is directed by the 54 Geo. 3, c. 91, to be made on the 25th of March, or within fourteen days afterwards. This Act is directory only, and overseers may be appointed at any time of the year. *R. v. Sparrow*, 1 Bott, 25. In the case of death, removal to another place, or bankruptcy of an overseer, two justices may, on oath thereof, appoint another in his stead till new ones are appointed. 17 Geo. 2, c. 38, s. 3.

The Queen's Bench Division would probably grant a *mandamus* to compel an appointment where it is neglected beyond the proper time. 1 *Nol. P. L.* 44.

By whom.] By 43 Eliz. c. 2, s. 1, and 13 & 14 Car. 2, c. 12, s. 21, the appointment must be made by two or more justices of the county in which the parish or township is situate. In corporate towns and cities it is made by the justices having jurisdiction therein, whether they be justices of the city, or borough, or of the county in which it is situate. 12 & 13 Vict. c. 8, s. 1; 15 & 16 Vict. c. 38.

If a parish lies in two or more counties, or part within the liberties of a city or town corporate, and part without, then as well the justices of the peace of every county, as also the justices of such city, &c., are to nominate the overseers. 43 Eliz. c. 2, s. 9.

To enable the justices to make a fit selection, the existing overseers usually, towards the close of their year, form a list of substantial householders proper to succeed them.

Number of Overseers.] There cannot be more than four overseers appointed, *R. v. Harman*, 1 Bott, 16, nor less than two, *R. v. Morris*, 4 T. R. 550; *R. v. Clifton*, 2 East, 168, unless it appear to the justices, who are required to appoint overseers, that two overseers cannot be conveniently appointed from the inhabitant householders in any parish, then such justices may appoint one overseer only, and if it appear to them that there is no such householder liable or fit to be appointed, they must appoint some inhabitant householder of an adjoining parish willing to serve to be such overseer, either with or without an annual salary to be paid out of the poor rate of the parish, which last-mentioned appointment is to endure until the usual time of the appointment of overseers, and may be renewed from year to year as long as the justices find it necessary. 29 & 30 Vict. c. 119.

Who may be appointed.] The persons appointed must be householders; but neither personal residence nor payment of rent or taxes is essential. Thus, every partner in a business, carried on in a dwelling-house, though only a servant reside there, is a householder for this purpose; *R. v. Poynder*, 1 B. & C. 178; and a woman may be appointed overseer. *R. v. Stubbs*, 2 T. R. 395. The 43 Eliz. c. 2, requires that they shall be *substantial* householders; but this is a relative term, and therefore labourers, being householders, have been held sufficient, where there were no more

competent persons in the township. *Ibid.* By the 59 Geo. 3, c. 12, s. 6, residents within two miles of the parish church, or one mile of the boundary of the parish, may be appointed, by their own consent, and on the request of the parish in vestry assembled, although they be non-resident in the parish, if they are assessed to the poor thereof.

Exemptions.] The persons exempt from serving other parish offices are also exempt from serving the office of overseer. See *ante*, p. 108.

Disqualifications.] Persons concerned in contracts for the supply of goods, &c., for the relief of the poor of a parish or union cannot be appointed overseers for that parish, or for any parish in that union. 12 & 13 Vict. c. 103, s. 6. Nor can the master of the workhouse or relieving officer. 13 & 14 Vict. c. 101, s. 6. Nor an assistant overseer. 29 & 30 Vict. c. 113, s. 10. Nor a person convicted of felony, fraud or perjury. 4 & 5 Will. 4, c. 76, s. 48. Nor a person convicted of corrupt practices at a municipal election. 35 & 36 Vict. c. 60, ss. 4, 28.

Form of Appointment.] The appointment must be in writing, and under the hand and seal of two justices, executed in the presence of each other. *R. v. Great Marlow*, 2 East, 244. It should appoint the parties "overseers" *eo nomine*; *R. v. St. George*, Fort. 320; and state them to be substantial householders in the parish; describing them as "principal inhabitants" is bad; *R. v. Sheringbrook*, 2 Ld. Raym. 1394; *Overseers of Weobly*, 2 Stra. 1261; and it must state that the appointment is for a parish, township, &c.; *R. v. Morris*, 4 T. R. 550; and show that it is within the magistrates' jurisdiction. *R. v. Houlditch*, 1 Bott, 4. It should express the time for which the appointment is made, as for "one year next ensuing," or "the present year." *R. v. Burder*, 4 T. R. 778; *R. v. Helling*, 3 Burr. 1904. If made on a Sunday, it will be bad, unless under peculiar circumstances, and done *bonâ fide*. *Reg. v. Butler*, 1 W. Bl. 649. If two sufficient appointments are made on the same day the last is void, for when the appointment is once legally made, the magistrates' jurisdiction ceases. *R. v. Great Marlow*, 1 Bott, 30. See *R. v. Searle*, *ibid.* 25.

Appeal against Appointment.] Persons aggrieved by the appointment, whether the appointee, or the parishioners at large, may appeal to the next quarter sessions. 43 Eliz. c. 2, s. 6; *R. v. Forrest*, 3 T. R. 38; *R. v. JJ. St. Albans*, 3 B. & C. 698. The

want of jurisdiction in the magistrates making the appointment, or the impropriety of their choice, are good grounds for quashing their order. *Albrighton v. Skipton*, 1 Str. 300; *R. v. Stotfold*, 4 T. R. 596.

Although no notice of appeal is specifically required, it seems that reasonable notice must be given. See *Re Blues*, 5 E. & B. 291.

The appointment, or order of sessions confirming it on appeal, may also be removed by *certiorari* into the Queen's Bench, and there quashed for any defect appearing on its face or shown by affidavit. *R. v. Gayer*, 1 Burr. 245; *R. v. Walsall*, 2 B. & Ald. 157; *R. v. Standard Hill*, 4 M. & Sel. 378. But a *mandamus* to an overseer to produce his appointment to a rated inhabitant, on a surmise that it is bad, was refused, the alleged defect being the subject of an appeal. *Reg. v. Harrison*, 9 Q. B. 794.

Refusing Office punishable.] If a person appointed overseer, and having had notice thereof, refuses to undertake or execute the duty, he may be indicted. *R. v. Jones*, 2 Str. 1146; *R. v. Poynder*, 1 B. & C. 178.

Business Offices.] By 24 & 25 Vict. c. 125, the overseers of any parish with a population of not less than 4,000 persons may, with the consent of the vestry and the Local Government Board, hire any room, or purchase or take upon lease or exchange any land or building, or sell land belonging to such parish, and invest the proceeds of such sale in the purchase of other land and building, or erect a suitable building on any land acquired, for the purposes of an office for the transaction of parish business. 24 & 25 Vict. c. 125, s. 1.

Parish Documents.] The overseers of any parish may, with the consent of the vestry, provide depositories for parish documents, and charge the cost thereof upon the poor rate. *Id.* s. 2; and see 58 Geo. 3, c. 69, s. 6.

Powers and Duties.] All acts which the whole body are competent to perform may properly be done by a majority. *Doe v. Clarke*, 14 East, 488; *R. v. JJ. Warwickshire*, 6 A. & E. 873. The overseers have by law the custody of the instruments by which they are appointed. *R. v. Stoke Golding*, 1 B. & Ald. 173.

Relief of the Poor.] The various modes in which parish relief may be afforded are stated under the title RELIEF, *post*, Chap. XII. The duty of administering relief in parishes which are under guar-

dians, or form part of a union, are now transferred to the guardians, and it is not lawful for any overseer to give any further or other relief or allowance from the poor rate than such as is ordered by the guardians, except in cases of sudden necessity. 4 & 5 Will. 4, c. 76, s. 54. The overseers are also required to keep registers of the names of persons in receipt of relief. Sect. 55.

By a general rule of April 22, 1842, the Local Government Board have laid down the duties of overseers of parishes in unions, with respect to temporary relief ordered by them. 1. They are forthwith to report the case in writing to the relieving officer of the district or the guardians of the union, and the amount of the relief, and the fact of having made the order. 2. They are to transmit orders of justices directing out-door relief to the relieving officer of the district, to be laid before the guardians at their next meeting. 3. They are to report the receipt of any order for medical relief from a justice, and the manner in which it has been complied with, in writing, to the relieving officer or Board of Guardians.

In parishes not in unions, or under guardians, the duties as to relief must still be performed by the overseers.

Election of Guardians.] By the same order, Art. 4, the overseers are to perform such duties, in connection with the election of guardians for the union, as may be imposed on them by the regulations of the Board in force for the time being. These regulations are contained in a general order of February 14th, 1877.

Registration of Voters.] 6 Vict. c. 18; 28 & 29 Vict. c. 36; 30 & 31 Vict. c. 102; and 31 & 32 Vict. c. 58, impose various duties on overseers as to publishing notices and lists of voters, and of claims and objections in *counties*.

The same Acts and 41 & 42 Vict. c. 26, impose the same duties with respect to *boroughs*.

Jury Lists.] As to the preparation of jury lists by overseers see *ante*, p. 205.

What Disbursements allowed.] Overseers may take credit for all sums properly expended, but not for disbursements to which the rate is not by law applicable. *R. v. Seville*, 5 B. & Ald. 180; *R. v. Bird*, 2 B. & Ald. 522. Thus, they cannot be allowed a salary, neither can they employ another as a collector of the rates at a salary at the public expense, even by the direction of the vestry. *R. v. Gwyer*, 4 N. & M. 158; *R. v. Glyde*, 2 M. & Sel. 323, n. See, however, 7 & 8 Vict. c. 101, s. 61.

If an overseer has advanced his own money for the maintenance of the poor, &c., he may repay himself during his year of office, and the succeeding overseers may levy such sums as remained due to him at the expiration of his office, and reimburse him out of the amount. 17 Geo. 2, c. 38, s. 11. . If the amount to be recovered by the overseers or their successors in the rate last made before the termination of their year of office is insufficient to meet the demands upon them, and the said overseers pay the necessary excess out of their funds, it is lawful for an overseer to pay to his predecessor any money so paid by him in excess, and such payment may be allowed by the auditor if it appears to him that the said payment in excess did not arise from the negligence or wilful action of the overseer so paying the same out of his own funds. 39 & 40 Vict. c. 61, s. 29.

By 11 & 12 Vict. c. 91, s. 1, if the overseers lawfully, by virtue of their office, contract a debt on account of the parish within three months prior to the termination of their year of office, and the same has not been discharged by them before their year of office is determined, such debt is payable by and recoverable from the succeeding overseers and chargeable upon the poor rate; if the debt was contracted during the year of office, but more than three months prior to its termination, it may be paid by the immediate successors if the vestry and the Local Government Board consent. See *Chambres v. Jones*, 5 Exch. 229.

The expenses of litigating settlements and other law expenses properly incurred will be allowed. But where a pauper given in charge by an overseer to the constable for riotous conduct was rescued, and the rescuer was indicted and acquitted, the overseer could not charge the costs of the prosecution to the parish. *R. v. Bird*, 2 B. & Ald. 522; see *Att.-Gen. v. Pearson*, 2 Coll. C. C. 581. The costs of defending an appeal against the overseers' accounts cannot be allowed. *R. v. Johnson*, 5 A. & E. 340. But where overseers have acted *bonâ fide*, and not improvidently, in contesting an appeal against a poor rate which they afterwards refused to support, the costs of so doing ought not to be disallowed because they acted without first obtaining the sanction of the vestry. *Reg. v. Street*, 18 Q. B. 682; see *Reg. v. Fouch*, 2 Q. B. 308; *Reg. v. Great Western Rail. Co.*, 13 Q. B. 327.

By 11 & 12 Vict. c. 91, s. 2, bills of costs for proceedings in a Court of law on behalf of the parish, regarding any matter affecting the poor rates, need not be paid before the termination of the proceedings;

but, in any case, the bill, when taxed, if otherwise chargeable against the parish, is to be payable out of the poor rates within one year next after the termination of the proceedings, and not otherwise, unless the Local Government Board by their order authorise the payment of the costs of such proceedings by annual instalments, not to exceed five, commencing from such termination.

By 4 & 5 Will. 4, c. 76, s. 89, all payments, charges or allowances made by any overseer or guardian and charged upon the poor rates contrary to this Act, or at variance with any rule, &c., of the Local Government Board, are declared to be illegal, and are to be disallowed.

By 5 & 6 Vict. c. 18, s. 5, the Local Government Board may, by their order, on receipt of a copy, under the hands of the overseers of a parish, of a resolution passed at a meeting of ratepayers and owners of property, consenting to such order, direct the overseers, by equal annual instalments, not exceeding ten, to pay out of the poor rate or other moneys applicable in aid thereof, any *bond fide* parish debt. And by sect. 6, the overseers, if directed by such order and resolution, may borrow any sum requisite to pay such debt, &c., and charge the same on poor rates, such sum to be repaid by equal annual instalments, not exceeding ten, and the instrument charging the rates to be approved by the Local Government Board.

Misconduct.] An attachment lies against an overseer for disobeying a Crown Office subpoena to produce rate books before justices on an inquiry as to a pauper's settlement. *Reg. v. Greenaway*, 7 Q. B. 126.

Neglect of Duty.] The sessions have no power to attach overseers for disobedience of their orders; in such case, the proper mode is to indict them for the misdemeanor. *R. v. Bartlett*, 1 Bott, 322. The 17 Geo. 2, c. 38, imposes a penalty not exceeding 5*l.*, nor less than 20*s.*, for every neglect or refusal to obey the directions of that Act.

By 4 & 5 Will. 4, c. 76, s. 95, if any overseer or other officer of any parish or union wilfully disobeys the legal and reasonable orders of the justices or guardians in carrying the rules, &c., of the Local Government Board or the provisions of the Act into execution, he is liable on conviction before two justices to pay a sum not exceeding 5*l.* But, by sect. 96, he is not to be subject to any prosecution or penalty for not executing any illegal order of such justices or guardians.

By the 7 & 8 Vict. c. 101, s. 63, if the overseers wilfully neglect

to make or collect sufficient rates for the relief of the poor, or to pay such money to the guardians as they require, and if, by reason of such neglect, any relief directed by the guardians to be given be delayed or withheld for seven days, every such overseer is, upon conviction thereof, to forfeit a sum not exceeding 20*l*.

By the 2 & 3 Vict. c. 84, s. 1, and 12 & 13 Vict. c. 103, s. 7, if the contribution to be made by the overseers to the Board of Guardians is in arrear, two justices may, on an application signed by the Chairman of the Board, summon any of the overseers, and order the amount to be levied by distress and sale of his goods.

Fraudulently removing Paupers.] By the 9 & 10 Vict. c. 66, s. 6, if any officer [which includes "overseer;" 14 & 15 Vict. c. 105, s. 11] of a parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or give directly or indirectly any money, relief or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise, or use any threat, to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person becomes chargeable to any parish to which he was not then chargeable, such officer, on conviction before two justices [of the county or jurisdiction in which the parish is situated from which the poor person is removed, 14 & 15 Vict. c. 105, s. 11], is liable to a penalty not exceeding 5*l*., nor less than 40*s*. [to be paid to the overseers of the parish to which the poor person becomes chargeable in consequence of such unlawful removal, &c., to be applied in aid of the poor rates. 14 & 15 Vict. c. 105, s. 11].

Embezzling Money, &c.] By 4 & 5 Will. 4, c. 76, s. 97, if any overseer, assistant overseer, master of a workhouse or other paid officer, or any other person employed by or under the authority of the guardians, purloins, embezzles, or *wilfully* (see *Carpenter v. Mason*, 12 A. & E. 629) wastes or misapplies any of the moneys, goods, or chattels belonging to any parish or union, every such offender is (in addition to such other penalties as he may be liable to), upon conviction before any two justices, to forfeit and pay a sum not exceeding 20*l*., and also treble the amount or value of the goods, &c., so purloined, &c., and is for ever thereafter incapable of serving any

office under any Act for the relief of the poor. And see 24 & 25 Vict. c. 96, ss. 68, 81—84.

False Declaration.] Overseers omitting to make the declaration required by the Union Assessment Committee Act, 1862, or making the same falsely, knowing it to be untrue, are liable to a penalty of 5*l.*, 27 & 28 Vict. c. 39, s. 11.

Supplying Provisions, &c., for Profit.] See *ante*, p. 326.

Actions, &c., by Overseers.] By 59 Geo. 3, c. 12, s. 17, all buildings, lands, and hereditaments, purchased, hired, or taken on lease by the churchwardens and overseers of the poor of any parish, by the authority and for any of the purposes of the Act, are to be conveyed, demised, and assured to the churchwardens and overseers and their successors, in trust for the parish, and they may take and hold, in the nature of a body corporate for the parish, all such buildings, &c., and also all other buildings, &c., belonging to such parish; and in all actions, suits, indictments, and other proceedings for or in relation to such buildings, &c., or the rent thereof, or for or in relation to any other buildings, &c., belonging to such parish or the rent thereof, and in all actions and proceedings upon or in relation to any bond to be given for the faithful execution of the office of assistant overseer, it is sufficient to name the churchwardens and overseers for the time being, describing them as such and naming the parish. *Doe v. Roe*, 4 Dowl. P. C. 222. See 5 & 6 Will. 4, c. 69, s. 3; *Doe v. Webster*, 12 A. & E. 442; *Gouldsworth v. Knights*, 11 M. & W. 337. Where it did not appear who had the legal property at the time of the passing of the Act, but payments of rent had been made to the churchwardens as such, the property was held to belong to the parish, in the popular sense, and to be vested in the churchwardens and overseers by the Act. *Doe v. Terry*, 4 A. & E. 274. See *Alderman v. Neate*, 4 M. & W. 704. The fact that the vicar and others consented to a lease made to the parish officers is not material, for the Court will not presume that they had any interest. *Doe v. Cockell*, 4 A. & E. 478.

Two overseers, one of whom was afterwards appointed sole churchwarden, do not constitute a body corporate under this Act. *Woodcock v. Gibson*, 4 B. & C. 462. The statute applies to those cases only where the land is vested in the parish officers exclusively for parochial purposes. *Att.-Gen. v. Lewin*, 8 Sim. 366. Where it is vested in existing trustees upon trust to permit the parish officers to receive the rents, the Act does not apply. *Allason v. Stark*,

9 A. & E. 255; *Rumball v. Munt*, 8 Q. B. 382; *St. Nicholas, Deptford, v. Sketchley*, *Ibid.* 394. But where land is held jointly by the parish officers and the corporation of a borough, as trustees for general parochial purposes, it vests in the parish officers by the statute. *Doe v. Benham*, 7 Q. B. 976; see *Doe v. Hiley*, 10 B. & C. 885; *Ex parte Annesley*, 2 Y. & Coll. 350. Where land is taken by churchwardens and overseers, jointly with the surveyors of highways, it is not taken in their corporate capacity, and they are individually liable. *Uthwatt v. Elkins*, 13 M. & W. 772. Copyholds are not within the Act. *Re Paddington Charities*, 8 Sim. 629; *Doe v. Foster*, 3 Com. B. 215. Charitable gifts to the poor are not parochial property. *Att.-Gen. v. Wilkinson*, 1 Beav. 370.

In actions by churchwardens and overseers under this statute, they must be so described. *Ward v. Clarke*, 12 M. & W. 747; *Furnival v. Coombes*, 5 M. & Gr. 736. Evidence of their acting is *prima facie* proof that they hold the offices. *Doe v. Barnes*, 8 Q. B. 1037. Where a memorandum, under which a pauper was put into possession of a parish house, was not signed by all the parish officers, it was held not to be a lease on which they could bring ejectment in their corporate name. *Doe d. Lansdell v. Gower*, 17 Q. B. 589.

By 55 Geo. 3, c. 137, s. 1, the property in all goods, furniture, provisions, clothes and materials whatsoever, provided for the use of any parish, township, hamlet or place, is vested in the overseers for the time being and their successors, and they may bring any action or indict any person who steals, buys or receives any such goods, &c.; and in every such action or indictment, the said goods, &c., are to be laid to be the property of the overseers of the parish for the time being, without stating their names. This does not affect local Acts, by which such property may be vested in other persons. See 5 & 6 Will. 4, c. 69, s. 7. Churchwardens and overseers may sue on a bond given under the 59 Geo. 3, c. 12, s. 17, for the performance of his duty by an assistant overseer. *Skelton v. Rushby*, 4 Exch. 545; and see now 7 & 8 Vict. c. 101, s. 61.

Recovery of Tenements.] By 59 Geo. 3, c. 12, s. 24, if any person, who has been permitted to occupy any parish or town house, or other tenement or dwelling belonging to, or provided by or at the charge of, any parish for the habitation of the poor thereof (see

Reg. v. JJ. Middlesex, 7 Dowl. P. C. 767), or who has unlawfully intruded himself or herself into any such house, &c., or into any house, &c., belonging to such parish, refuses or neglects to quit the same and deliver up possession thereof to the churchwardens and overseers of such parish, within one month after notice and demand in writing, for that purpose, signed by them or the major part of them, has been delivered to the person in possession, or, in his or her absence, affixed on some notorious part of the premises, any two justices of the peace, upon complaint to them made by one or more of such churchwardens and overseers, may cause possession of the premises to be delivered to the churchwardens and overseers.

If any person to whom any parish land has been let for his own occupation refuses to quit and deliver up the possession thereof to the churchwardens and overseers of such parish, at the expiration of the term for which the same have been demised to him, or if any person unlawfully enters upon, or takes or holds possession of any such land, or any other land or hereditaments belonging to such parish or to the churchwardens or overseers, such churchwardens and overseers, after such notice and demand of possession as is directed in the case of parish houses, may exhibit a complaint before justices, who are required, if they adjudge the same to be true, to cause possession to be delivered to the churchwardens and overseers, in the like manner as is directed with regard to parish houses, s. 25. These provisions have been extended to guardians of unions and parishes by 5 & 6 Will. 4, c. 69, s. 5. If the justices have acted within their jurisdiction, the Queen's Bench Division will not review their decision. *Reg. v. Bolton*, 1 Q. B. 66.

This statute was not intended to take away the right which the owner of property had at common law to enter and take possession, if it could be done peaceably, but to provide a more expeditious mode of obtaining possession where it is obstinately withheld. *Wildbor v. Rainforth*, 8 B. & C. 4.

Criminal Prosecutions.] Where any complaint is made of not providing apprentices or servants with food and necessities, or doing bodily harm whereby life is endangered, or health permanently injured, or of any bodily injury inflicted upon any person under sixteen years of age for which the party committing it is liable to be indicted, and two justices before whom such complaint is heard certify that it is necessary for the purposes of public

justice that the prosecution should be conducted by the guardians of the union or place, or where there are no guardians by the overseers, such churchwardens or overseers are to conduct such prosecution, and pay any costs (not allowed by order of the Court) out of their funds. The clerk of the guardians or an overseer may be bound over to prosecute. 24 & 25 Vict. c. 100, s. 73.

Actions against Overseers.] Where all the churchwardens and overseers jointly order goods to be supplied to the poor, all may be jointly sued; and an assistant overseer joining in the order is liable. *Kirby v. Banister*, 5 B. & Ad. 1069. But it is a question for the jury whether credit was given to one overseer individually or to the parish. *Euden v. Titchmarsh*, 1 A. & El. 691; *Malkin v. Vickerstaff*, 3 B. & Ald. 89. Overseers cannot by their contracts render their successors liable. *Sowden v. Emsley*, 3 Stark. 28; *Chambres v. Jones*, 5 Exch. 229. Borrowing money is no part of an overseer's duty, nor within his authority; and, therefore, a surety on a bond conditioned for an overseer's faithfully accounting for all sums coming to his hands by virtue of his office, is not liable for money lent to the overseer and applied by him to parochial purposes. *Massey v. Knowles*, 3 Stark. 65. So where, pending a reference of a disputed rate, one overseer borrows money on his own note for the relief of the poor, the lender may recover it from him, and his co-overseers are not liable. *How v. Keech*, 1 Bott, 339.

Overseers are liable for necessities or medical attendance supplied to paupers, if ordered or recognized by them. *Lumb v. Bunce*, 4 M. & Sel. 275. But where the relief is given in another parish to casual poor, they are only liable if they expressly promise to pay. See *post*, p. 357.

Protection of Overseers.] 43 Eliz. c. 2, s. 18, and 21 Jac. 1, c. 12, s. 3, enable an overseer to plead the general issue to an action brought for any thing done by him under the authority of that Act. *Butterton v. Furber*, 1 B. & B. 517; see *Skingley v. Surridge*, 11 M. & W. 503.

In respect of Distresses.] The 17 Geo. 2, c. 38, s. 8, provides, that a distress for a poor rate shall not be deemed unlawful (if the sum is really due) on account of any defect in the appointment of the overseers, or the rate or warrant; but that the party aggrieved shall recover for special damage only in an action on the case; and not at all if tender of sufficient amends has been made before

action brought. Sect. 10. Overseers are also within the protection of the 24 Geo. 2, c. 44, when levying poor rates by distress. See *ante*, p. 294.

SECTION VII.—ASSISTANT OVERSEERS AND COLLECTORS.

Assistant Overseer, how appointed.] By 59 Geo. 3, c. 12, s. 7, the inhabitants of every parish, township and village, assembled for the purpose in vestry [after due legal notice, sect. 35], may elect discreet persons to be assistant overseers; no other qualification is required, nor is the number limited. Upon being so elected or nominated, two justices are to appoint them by warrant under their hands and seals, with such salary as shall have been fixed by the inhabitants in vestry. They are to execute all the duties of overseers expressed in the warrants for their appointment, and to continue in office till the appointment is revoked by the vestry or they resign; and security may be taken by bond, with or without surety, and in such penalty as is thought fit. This bond is to be made to the churchwardens and overseers, and may be put in suit by the churchwardens and overseers for the time being, by direction of the vestry. The salary is to be paid out of the money raised for the relief of the poor, at such times and in such manner as is agreed upon between the vestry and the persons appointed.

It seems that the offices of overseer and assistant overseer are not necessarily incompatible; and that accepting the former office does not vacate the latter. *Worth v. Newton*, 10 Exch. 247. But no assistant overseer can be a guardian. 5 & 6 Vict. c. 57, s. 14.

The assistant overseer derives his authority from the vestry, and not as servant or agent to the overseers. *Reg. v. Watts*, 7 A. & E. 461; *Points v. Attwood*, 6 Com. B. 38. As to his duties and liabilities, see *Bennett v. Edwards*, 7 B. & C. 516; *Skingley v. Surridge*, 11 M. & W. 503.

In an indictment for larceny and embezzlement against an assistant overseer or collector appointed under 59 Geo. 3, c. 12, s. 7, he is properly described as the servant of the inhabitants of the parish. *R. v. Carpenter*, L. R. 1 C. C. R. 29; 35 L. J. M. C. 169; 12 & 13 Vict. c. 103, s. 15.

Where an assistant overseer is reappointed by justices on different terms as to salary, the sureties are discharged from the bond given

on his original appointment. *Bamford v. Iles*, 3 Exch. 380 ; but see *Frank v. Edwards*, 8 Exch. 214. If the party was never appointed pursuant to the resolution under which the bond was given, it cannot be enforced. *Holland v. Lea*, 9 Exch. 430.

An assistant overseer, appointed under 59 Geo. 3, c. 12, s. 6, may sign the poor rate as one of the overseers, if he be appointed by vestry to perform all the duties of the overseers. *Baker v. Lock*, 34 L. J. M. C. 49. He is to assist the overseer in making out and serving notices of arrears of poor rates. Order of Local Government Board of 15th November, 1867.

Collector.] If the guardians of a parish or union make application to the Local Government Board to direct the appointment of a paid collector of rates in such parish or union, or any parish of such union, the Board may order them to do so ; and are to have the same powers with respect to such collectors as they have with respect to paid officers. 7 & 8 Vict. c. 101, s. 62. See 2 & 3 Vict. c. 84. That section makes the salary chargeable upon and payable out of the poor rates, and recoverable against the overseers and guardians in the same way as the salaries of paid officers are recoverable. But the guardians cannot be sued by a collector for his salary. *Smart v. West Ham Union*, 10 Exch. 867.

When a collector of rates has been appointed for a parish under the order of the Local Government Board, the power of the vestry or parish officers, or any other persons than the guardians, to appoint a collector or assistant overseer, is to cease, except where they are appointed under a Local Act for a parish containing above 20,000 inhabitants. 7 & 8 Vict. c. 101, s. 61. See *Reg. v. Greene*, 17 Q. B. 793.

The vestry of a parish situate in a district for which a collector or assistant overseer is appointed by order of the Local Government Board may appoint such collector or assistant overseer to discharge all the duties of overseer, in addition to those of collector, in the same manner as if he had been appointed under the 59 Geo. 3, c. 12. But no overseer is to be discharged by such appointment from his responsibility for the provision and supply of moneys necessary for the relief of the poor, or for any purposes for which poor rates may be made. All collectors and assistant overseers are, subject to the rules of the Local Government Board, to obey, in all matters relating to the duties of overseer, the directions of the majority of the overseers of the parish for which they act. They are also to give to the

guardians of the parish or union, or (if there be none such) to the overseers, security for the due performance of their duties; such bonds are not liable to stamp duty; and all such bonds given under this Act or the 59 Geo. 3, c. 12, and not contrary to the rules of the Local Government Board, may, if the guardians see fit, be put in suit by the Board of Guardians, notwithstanding they were originally given to the overseers or other persons; and every bond or security given by or on account of any officer appointed by the guardians, for the due performance of his duties, is to remain in force notwithstanding any change in the district for which he is appointed or required to act, or the addition or separation of any parish to or from the union, since the giving of the security. 7 & 8 Vict. c. 101, s. 61. See *Skelton v. Rushby*, 4 Exch. 545.

Assistant overseers and collectors are subject to the control of the Local Government Board, as paid officers under the 4 & 5 Will. 4, c. 76, s. 46. 7 & 8 Vict. c. 101, s. 61.

Powers and Duties.] The duties of collector, as prescribed by order of the Local Government Board of March 17, 1847, are, to assist the churchwardens and overseers in making and levying the poor rates; to collect the rates; to assist in filling up receipts, keeping books, and making returns relating to the rates; to produce the rate and other account books when required, to balance the rates, and to furnish the churchwardens and overseers with a list of defaulters, and under their direction to institute proceedings against them; to attend the meetings of the guardians, and obey the lawful directions of the guardians and of the majority of the overseers. Provision is also made for the payment of his salary and for its discontinuance in case of removal from office, for the mode of taking security, and for the continuance of the collector in office.

By an Order of the Local Government Board of November 15, 1867, collectors of poor rates are to receive increased remuneration in certain cases, and are to assist overseers in making out and serving notices of arrears of poor rates. The duties of collector as to parish accounts are set out in an Order of the Board, dated January 14, 1867. 42 & 43 Vict. c. 54, s. 17, empowers the overseers of any parish, with the consent of the vestry, to require the collectors of the poor rate to collect any rate levied by the overseers over part of the parish only, and to remunerate them for the extra work thus imposed.

CHAPTER XII.

RELIEF.

SECTION I. *Relief generally.*

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SECTION I.—RELIEF GENERALLY.

By whom.] By 4 & 5 Will. 4, c. 76, s. 15, and 34 & 35 Vict. c. 70, the administration of relief to the poor is made subject to the direction and control of the Local Government Board, who, however, cannot interfere in any individual case for the purpose of ordering relief.

By sect. 54 of 4 & 5 Will. 4, c. 76, the ordering, giving and directing of all relief to the poor of any parish under the government and control of guardians is to belong exclusively to such guardians; and it is not lawful for any overseer to give any further relief or allowance from the poor rate than such as is ordered by such guardians, except in cases of sudden and urgent necessity, in which cases he is required to give such temporary relief as each case requires, in articles of

absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he applies for relief or not ; and in case such overseer refuses or neglects to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, a justice of the peace may order him to give such temporary relief, in articles of absolute necessity, but not in money ; and in case he disobeys such order, he is, on conviction, to forfeit a sum not exceeding 5*l.* And a justice may give a similar order, for *medical relief only*, to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it ; and an overseer is liable to the same penalties as aforesaid for disobeying such order. But a justice cannot order relief to any person from the poor rates, except as hereinbefore provided. Guardians of parishes or unions under Local Acts may grant out-door relief in the same manner. 11 & 12 Vict. c. 91, s. 12.

When the guardians prescribe a task of work to be performed by any poor person, to whom, or to whose wife, if he be liable to maintain such wife, or child under sixteen, relief has been granted out of the workhouse, such task being suited to the age, strength, and capacity of such person, and being of a description previously approved of by the Local Government Board, and such person refuses or wilfully neglects such task, or wilfully destroys or damages any of the tools, materials, or other property of the guardians, he is to be deemed a disorderly person within meaning of 5 Geo. 4, c. 83 ; 29 & 30 Vict. c. 113, s. 15.

A General Order of the Board of 27th February, 1875, provides for the appointment of an out-door relief distributor, who is to take charge of the stores and keep the accounts.

Out-door Relief.] By sect. 27, in any union, two justices acting for the district in which such union is situated may direct that relief be given to any adult person who, from old age or infirmity of body, is wholly unable to work, without requiring that he shall reside in the workhouse ; but one of the justices must certify, in the Order of his own knowledge, that such person is wholly unable to work ; and such person must be lawfully entitled to relief in the union, and desire to receive the same out of a workhouse. An order of justices under this section cannot be made without summoning the parties to be affected by it to show cause why it should not be made. *Reg. v. Totnes Union*, 7 Q. B. 690.

Relief Committees.] The Local Government Board have issued orders to many unions and parishes for the establishment of relief committees. The guardians may form committees of themselves, and assign to any one of such committees the whole or part of the district of any of the relieving officers of the union for the purpose of such committee, determining and granting all applications for relief in such district. Committees in the metropolis are provided by a General Order of 29th July, 1874.

Overseers to provide Funds.] By an Order of 26th February, 1866, the clerk to the guardians is, four weeks at least before 29th of September and 25th of March in each year, to estimate the probable amount of expenditure in the relief of the poor, &c., and estimate the probable balance due to or from each parish at the end of the current half year, and apportion the sums to be contributed by the several parishes comprised in the union, and prepare the orders on the overseers for the payment of such contributions, and such orders are to be laid before the guardians for their consideration a reasonable time before the expiration of current half year. Orders for contribution of the amount are to be made by the guardians on the overseers at the commencement of each half year ending on the days above-mentioned, and from time to time as occasion may arise, and in such orders the contributions are to be directed to be paid in one sum or by instalments on days to be specified by the guardians in the orders. By an Order of July 24th, 1847, the orders for contribution are to be in writing, according to the form specified, signed by the presiding chairman and two other guardians present at the meeting, and countersigned by the clerk. As to the mode of computing such contributions, see *post*, p. 342. If the overseers fail to pay the money required, the guardians may proceed against them before justices under 4 & 5 Will. 4, c. 76, s. 98. By 2 & 3 Vict. c. 84, s. 1, whenever any such contribution is in arrear, two justices acting for the district in which such parish is situated may, on application under the hand of the chairman or acting chairman of such Board, summon the overseers, &c. to show cause, at a special sessions, why such contribution has not been paid, and, after hearing the complaint, the justices may, by warrant, cause the amount of the contribution in arrear, with the costs to be levied upon the said overseers, &c., or any of them, in the same manner as money assessed for the relief of the poor, and paid to the said Board. See *R. v. Boteler*, 33 L. J.

M. C. 101. By the 12 & 13 Vict. c. 103, s. 7, if a copy of the guardians' order has been served on one of the overseers, &c., it may be enforced against him as fully as if it had been served on all.

By the 7 & 8 Vict. c. 101, s. 63, if the overseers wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay the guardians such moneys as they may require, and if, by reason of such neglect, any relief directed by the guardians to be given to any poor person is delayed or withheld for seven days, every such overseer is, on conviction, to forfeit for every such offence a sum not exceeding 20*l*.

Charging Common Fund.] By 28 & 29 Vict. c. 79, s. 1, the cost of relief to the poor, and the expenses of the burial of the dead body of any poor person dying within the union, and charges incurred by guardians in respect of vaccination and registration are to be chargeable upon the common fund of such union. See 24 & 25 Vict. c. 55, s. 8. Lunatics are chargeable upon the common fund. 24 & 25 Vict. c. 55, s. 6; 27 & 28 Vict. c. 29, s. 5. Parishes in unions are to contribute to the common fund according to the annual rateable value of their assessable property. 24 & 25 Vict. c. 55, s. 9; 28 & 29 Vict. c. 79, s. 14. The guardians in computing the amount of contribution to the common fund from the several parishes are to take the valuation lists when approved for all the parishes comprised in the union. 25 & 26 Vict. c. 103, s. 30.

The guardians are to distribute the charges upon the common fund during and at the close of every half year, in the proportions according to which the orders for the contributions to the common fund were made upon the several parishes comprised in such unions, at the commencement of such half year, notwithstanding the change which may be made in the valuation list of any parish during such period. 28 & 29 Vict. c. 79.

By 11 & 12 Vict. c. 110, s. 10, money found on any poor person professing to be a destitute wanderer or wayfarer, applying for relief by admission to a workhouse, or otherwise, is to be delivered to the guardians, and applied in aid of the common fund.

Moneys borrowed by guardians are to be a charge on the common fund. 32 & 33 Vict. c. 45, s. 4. As to the manner in which moneys borrowed by guardians may be repaid, see s. 5.

Recovering Cost of Relief.] By 12 & 13 Vict. c. 103, s. 16, guardians may appropriate money or securities of paupers to reimburse amount expended in relief during prior twelve months; and in the

event of death the expenses incurred in the burial and maintenance during the twelve months previous to his decease. Administration to the effects of a pauper who died chargeable to a union has been granted to the guardians of the union as creditors under this section. *Cleaver v. McKenna*, 35 L. J. P. & M. 91; *Windeatt v. Sharland*, L. R. 2 P. & D. 217; 25 L. J. 574, 783. By sect. 17 the guardians may pay the cost of the burial of any pauper, dying out of the limits of the union or parish, who was at the time of the death in receipt of relief from such guardians; and the cost of burying may be recovered in like manner and from the same parties as the cost of relief (if given to such person when living) would have been recoverable.

If any artificer, or his wife, or widow, or children, under twenty-one years of age become chargeable to the parish, the overseers may recover any wages earned by him within the three preceding, and not paid in cash. 1 & 2 Will. 4, c. 37, s. 7.

As to recovering relief of pauper lunatic, see 16 & 17 Vict. c. 91, s. 120.

Where any pauper is entitled to an annuity, or periodical payment, the trustee, &c., may pay cost of relief of such pauper to guardians. See *post*, p. 352.

As to recovering relief from RELATIONS, see *post*, p. 347.

As to recovering relief given by way of loan, see *post*, p. 351.

Poor Relief in London.] In addition to the general Poor Law Acts, special enactments have been passed dealing with metropolitan poor relief. 30 Vict. c. 6 provides for the establishment in the metropolis of asylums for the sick, insane, and other classes of the poor, and of dispensaries; and for the distribution over the metropolis of portions of the charge for poor relief. See also 28 Vict. c. 34; 33 & 34 Vict. c. 18; 34 Vict. c. 15.

SECTION II.—TO ABLE-BODIED POOR.

Power to give.] 4 & 5 Will. 4, c. 76, s. 52, enacts that the Local Government Board may declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the work-house, and all relief given by any overseer, guardian, &c., contrary to such orders, &c., is to be unlawful and disallowed in the accounts

of the persons giving the same. The overseers or guardians may, however, in cases of emergency, depart from these rules with the approval of the Board.

Rules.] The following rules were laid down by an Order of the 21st December, 1844, with respect to unions which have provided adequate workhouse accommodation.

Art. I. Every able-bodied person, male or female, requiring relief from any parish within any of the said unions, shall be relieved wholly in the workhouse of the union, together with such of the family of every such able-bodied person as may be resident with him or her and may not be in employment, and together with the wife of every such able-bodied male person, if he be a married man, and if she be resident with him; save and except in the following cases:—

1st. Where such person shall require relief on account of sudden and urgent necessity.

2nd. Where such person shall require relief on account of any sickness, accident, or bodily or mental infirmity affecting such person, or any of his or her family.

3rd. Where such person shall require relief for the purpose of defraying the expenses, either wholly or in part, of the burial of any of his or her family. See 38 & 39 Vict. c. 55, s. 142, and *R. v. Vann*, 21 L. J. M. C. 39.

4th. Where such person, being a widow, shall be in the first six months of her widowhood.

5th. Where such person shall be a widow and have a legitimate child or legitimate children dependent upon her, and incapable of earning his, her, or their livelihood, and no illegitimate child born after the commencement of her widowhood.

6th. Where such person shall be confined in any gaol or place of safe custody.

7th. Where such person shall be the wife or child of any able-bodied man who shall be in the service of her Majesty as a soldier, sailor, or marine.

8th. Where any able-bodied person, not being a soldier, sailor or marine, shall not reside within the union, but the wife, child or children of such person shall reside within the same, the Board of Guardians of the union, according to their discretion, may afford relief in the workhouse to such wife, child or children, or may allow out-door relief for any such child or children being within

the age of nurture, and resident with the mother within the union.

Art. II. In every case in which out-door relief shall be given, on account of sickness, accident or infirmity, to any able-bodied male person resident within any of the said unions, or to any member of the family of any able-bodied male person, an extract from the medical officer's weekly report (if any such officer shall have attended the case), stating the nature of such sickness, accident or infirmity, shall be specially entered in the minutes of the proceedings of the Board of Guardians of the day on which the relief is ordered or subsequently allowed. But if the Board of Guardians shall think fit, a certificate under the hand of a medical officer of the union, or of the medical practitioner in attendance on the party, shall be laid before the Board, stating the nature of such sickness, accident or infirmity, and a copy of the same shall be in like manner entered in the minutes.

Art. III. No relief shall be given from the poor rates of any parish comprised in any of the said unions to any person who does not reside in some place within the union, save and except in the following cases :—

1st. Where such person, being casually within such parish, shall become destitute.

2nd. Where such person shall require relief on account of any sickness, accident, or bodily or mental infirmity, affecting such person, or any of his or her family.

3rd. Where such person shall be entitled to receive relief from any parish in which he may not be resident, under any order which justices may by law be authorised to make.

4th. Where such person, being a widow, shall be in the first six months of her widowhood. See 9 & 10 Vict. c. 66, s. 2.

5th. Where such person is a widow, who has a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in the union in which such parish may be comprised. See 7 & 8 Vict. c. 101, s. 26.

6th. Where such person shall be a child under the age of sixteen maintained in a workhouse or establishment for the education of pauper children not situate within the union. See 7 & 8 Vict.

c. 101, s. 51 ; 29 & 30 Vict. c. 113, s. 16 ; 25 & 26 Vict. c. 43 ; and 31 & 32 Vict. c. 122, s. 42.

7th. Where such person shall be the wife or child, residing within the union, of some person not able-bodied, and not residing within the union.

8th. Where such person shall have been in the receipt of relief from some parish in the union, at some time within the twelve calendar months next preceding the date of the order, being settled in such parish, and not being resident within the union.

Art. IV. Where the husband of any woman is beyond the seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief which the guardians give to his wife, or her child or children, shall be given to such woman in the same manner and subject to the same conditions as if she were a widow. See 7 & 8 Vict. c. 101, s. 25.

Such relief is extended to a married woman living separate from her husband. 39 & 40 Vict. c. 61, s. 18.

By another Order of December 14, 1852, the following regulations have been made, applicable to unions not having adequate workhouse accommodation.

Art. I. Whenever the guardians allow relief to any able-bodied male person out of the workhouse, one-half at least of the relief so allowed shall be given in articles of food or fuel, or in other articles of absolute necessity.

Art. II. In any case in which the guardians allow relief for a longer period than one week to an indigent poor person resident within their union or parish, without requiring that such person shall be received into the workhouse, such relief shall be given or administered weekly, or at such more frequent periods as they deem expedient.

Art. III. It shall not be lawful for the guardians or their officers to establish any applicant for relief in trade or business ; nor to redeem from pawn for any such applicant any tools, implements or articles ; nor to purchase and give him any tools, &c., except articles of clothing or bedding where urgently needed, and such articles as are mentioned in Art. I. ; nor to pay directly or indirectly the expense of his conveyance (except in certain cases) ; nor to give money to or on his account for the purpose of effecting any of the above objects ; nor to pay wholly or in part the rent of his house or lodging ; nor to apply any portion of the relief ordered in

such rent ; but this article does not apply to any shelter or lodging procured for a poor person in case of sudden necessity or mental imbecility.

is substantially the same as Art. III. of the preceding

No relief shall be given to any able-bodied male person employed for wages or other hire or remuneration by

Every able-bodied male person, if relieved out of the shall be set to work by the guardians, and be kept under their direction and superintendence so long as he to receive relief.

provides for certain exceptions to the two preceding similar to those contained in the first article of the Order of 21, 1844.

If the guardians shall, upon consideration of the special circumstances of any particular case, deem it expedient to depart from any of the above regulations (except Art. III.), and within twenty-one days report the same, with the grounds thereof, to the Local Government Board, the relief given, before an answer to their report has been returned, shall not be deemed to be contrary to the provisions of this Order, and if the Local Government Board approve of such departure, and notify such approval to the guardians, all relief given after such notification, in accordance with such approval, shall be lawful.

SECTION III.—BY RELATIONS.

How compelled.] The 43 Eliz. c. 2 expressly recognises the right of the indigent to claim support from their relatives, and, by sect. 6, enacts, that parents, or grandfathers, or grandmothers, may be assessed by justices to the relief of their children or grandchildren, and that children may be assessed to the relief of their parents ; the party assessed being of sufficient ability, and the party to be maintained being “ poor, old, blind, lame or impotent, or not able to work,” or, in other words, actually chargeable, in the technical language employed on this subject. Maintenance orders are to be made by the justices in petty sessions having jurisdiction in the union or parish to which the poor person in whose behalf the same is sought to be made is chargeable, and are to be enforced under 11 & 12 Vict. c. 43 ; 31 & 32 Vict. c. 122, s. 36.

And by 11 & 12 Vict. c. 110, s. 8, the guardians of a union are to be entitled to obtain orders of maintenance upon the relations liable under any statute to maintain any poor person whose relief would be chargeable to the common fund of the union. The Board of Guardians of a parish may recover the costs of and obtain orders for the maintenance of a pauper in like manner. 39 & 40 Vict. c. 61, s. 25.

Who may be relieved.] This mode of relief can only be obtained for persons who, from impotence or infirmity, are unable to work. *St. Andrew's Undershaft v. De Breta*, 1 *Ld. Raym.* 699. Those who can, but are unwilling to labour for their subsistence, are not to be supported by their relations. *R. v. Gulley*, *Fol.* 47. The justices cannot order the relation to maintain them, but should make an order of so much a week upon the relation. *Shermanbury v. Boldney*, *Comb.* 208; *R. v. Jones*, *Fol.* 41.

What Relations chargeable.] The Act extends to natural relations only. A father is not liable to support his son's wife or widow; *R. v. Dempson*, 2 *Stra.* 955; nor a son-in-law his wife's mother; *R. v. Munden*, 1 *Str.* 190; nor is a man bound to support his brother, brothers not being mentioned in the statute. *R. v. Smith*, 2 *C. & P.* 449. But such an order may be made on a grandfather, though the father be living, if he is unable to support his child; *Reg. v. Joyce*, 16 *Vin. Ab.* 423; and, as it seems, even if the father is able. *Per Lord Tenterden*, *C. J.*, *R. v. Cornish*, 2 *B. & Ad.* 498. Grandchildren cannot be compelled to support their grandparents. *Maud v. Mason*, *L. R.* 9 *Q. B.* 254; 43 *L. J. M. C.* 62.

An order cannot be made, under this statute, upon a man to maintain his wife while he is resident with her, but if he runs away from her he may be punished as a rogue and vagabond. *R. v. Davison*, 11 *Mod.* 268. And if the child to be relieved were a bastard, this is not within the statute. *City of Westminster v. Gerrard*, 2 *Bulst.* 346.

Requisites of Order.] The order must direct and require the party to relieve the pauper, a mere recommendation being insufficient. It should also define the time for which the relief is to be given. An order to pay so much a week, indefinitely or while the pauper continues chargeable, is bad. *Re Morten*, 5 *Q. B.* 591. But an order to pay until the Court shall order to the contrary has been considered sufficient. *Jenkins' case*, 1 *Bott.* 365.

If a sum is directed to be paid weekly, it is due at the beginning of the week. *R. v. Fearnley*, 1 T. R. 316. It seems the order may be retrospective, as well as for future relief. *Reg. v. Joyce*, 16 Vin. Ab. 423. And it may order the party to contribute to the relief of several children in one family. *R. v. Robinson*, 2 Burr. 799. But in that case it should specify the sum to be paid to each. *Re Morten, supra*.

Remedy.] The remedy, in case an order is illegally made upon a person, is by removing it into the Queen's Bench Division upon a case, if it can be obtained; or if the defect appears on the face of the order, the Court will quash it without being informed of the facts by a case. Where there is neither an apparent defect nor a case granted upon which to take the judgment of the Court above, the only mode of resistance is by disobedience, and proof of the illegality as a defence to an indictment, or by bringing an action for an illegal distress, if the penalty should be levied by distress and sale.

Liability of Husbands and Fathers.] By 4 & 5 Will. 4, c. 76, s. 56, all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind, or deaf and dumb, is to be considered as given to the husband of such wife, or to the father of such child or children, as the case may be; and any relief given to or on account of the child or children of any widow is to be considered as given to such widow. But this does not affect the right to proceed against the relations, under the 43 Eliz. c. 2.

By sect. 57, every man who marries a woman having a child or children at the time of such marriage, whether legitimate or illegitimate, is liable to maintain such child or children as a part of his family, and is chargeable with all relief, granted to or on account of such child or children, until such child or children attain the age of sixteen, or until the death of their mother, and such child or children are, for the purpose of this Act, to be deemed a part of the husband's family.

When a married woman requires relief without her husband, the guardians or overseers of the union or parish to which she becomes chargeable may apply to the justices having jurisdiction in such union or parish in petty sessions, and thereupon such justices may summon such husband to show cause why an order should not be made upon him to maintain his wife, and make an order upon him

to pay a sum, weekly or otherwise, towards the cost of the relief of the wife. 31 & 32 Vict. c. 122, s. 33; *Thomas v. Alsop*, L. R. 5 Q. B. 151; 39 L. J. M. C. 43.

As to liability of husband for maintenance of wife in lunatic asylum, see *post*, p. 366.

Liability of Wives and Mothers.] Where the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, upon application of the guardians, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband; as, by 31 & 32 Vict. c. 122, s. 33, they may make an order against a husband for the maintenance of his wife. 33 & 34 Vict. c. 93, s. 13. A married woman having separate property is subject to the same liability for the maintenance of her children as a widow is, provided always that a husband is not relieved from his legal liability to maintain her children. Sect. 14. As to a wife deserting her children, see 5 Geo. 1, c. 8, *infra*.

Deserting Family.] Persons able to maintain themselves and their families, but neglecting to do so, whereby they become chargeable, are punishable as rogues and vagabonds. 5 Geo. 4, c. 83, s. 3. Proceedings may be taken against any person who runs away and leaves his wife, or his or her child chargeable, or whereby she or they or any of them become chargeable to any union or parish within two years after the commission of the offence, and a summons or warrant may be issued upon the information of any relieving officer of the guardians stating that relief has been applied for on behalf of the wife or child, and that he believes that the husband or parent has left the wife or child and gone away. 39 & 40 Vict. c. 61, s. 19. And if a husband, father, or mother abscond from their place of abode, leaving any wife or children chargeable, upon the application of the parish officers, the goods or profits of lands, &c., of such party may be seized by order of two justices, and, after confirmation by the sessions, may be disposed of to reimburse the parish for providing for such wife, &c. 5 Geo. 1, c. 8, s. 1. The order should show how much of the fugitive's property is to be seized, and the *quantum* of relief and the period of its duration should be fixed by the sessions, if made prospectively. *Stable v. Dixon*, 6 East, 163.

Liability of Mothers of Bastards.] See *post*, p. 358.

Soldiers.] By 42 & 43 Vict. c. 33, s. 139, a soldier is liable to

contribute to the maintenance of his wife and children and any bastard child to the same extent as if he were not a soldier; but no execution can issue against his person, kit, &c., nor is he liable to be punished for offence of deserting or neglecting to maintain his wife or family, or of any member thereof, or of leaving them chargeable to any union. For the purposes of such maintenance and relief 6*d.* may be stopped from the daily pay of a non-commissioned officer not below the rank of sergeant, and 3*d.* from the daily pay of an ordinary soldier.

Merchant Seamen's Families.] If the wives, children, or step-children of seamen in the merchant service become chargeable whilst they are absent on a voyage, the parish or union is to be reimbursed by an order made by two justices on the owner of the ship to pay such sums as the parish or union has advanced out of the wages. 17 & 18 Vict. c. 104, ss. 192, 193.

SECTION IV.—BY LOAN.

By 4 & 5 Will. 4, c. 76, s. 58, any relief, or the cost price thereof, given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the Local Government Board direct to be given by way of loan (and whether any receipt for such relief, or engagement to repay the same, or the cost price thereof, or any part thereof, shall have been given or not by the person to or on account of whom the same shall have been so given), shall be considered to be a loan to such poor person.

By the Orders of December 21, 1844, and December 14, 1852, no relief which is contrary to any regulation in those Orders (see *ante*, p. 344) is to be given by way of loan; but any relief given in conformity with those orders, to or on account of any person, to whom relief may be lawfully given, above the age of twenty-one, or to his wife or any part of his or her family under the age of sixteen, may, if the guardians, think fit, be given by way of loan.

Recovery of Loan.] Upon the application of overseers or guardians justices may attach wages in hand of employer for repayment of relief given by way of loan. Sect. 59.

By 11 & 12 Vict. c. 110, s. 8, all relief granted by the guardians to any pauper upon loan, and which is chargeable to the common

fund of the union, or to any parish therein, may be recoverable in the County Court on the plaint of the guardians, who may apply and be heard in such Court by any officer appointed by them for such purpose, in manner prescribed by the statutes enabling them to appoint officers. Provided, that the remedy already provided for the recovery of relief granted on loan shall be applicable to the relief so chargeable to the common fund. The Board of Guardians of a parish may recover the costs of and obtain orders for the maintenance of a pauper in like manner as the guardians of a union under the above provision. 39 & 40 Vict. c. 61, s. 25.

If any pauper is entitled to any annuity or periodical payment, the trustee or other person bound to make payment of the same to the pauper may pay to the Board of Guardians, out of the instalments which have become due, the cost incurred in the relief of such pauper accrued since the last instalment, and such payment is to be a legal discharge.

If any trustee or other person decline to make any payment, the guardians may apply to justices for an order to have such payment made.

This clause only applies where the guardians or their relieving officer has declared the relief to be given on loan. 39 & 40 Vict. c. 61, s. 23.

The above provisions do not apply to any moneys which a pauper having a wife or other relative dependent upon him for maintenance may be entitled to receive as a member of any friendly or benefit society. Such moneys, subject to any deductions for keeping up his membership, required by the rules of such society, are to be paid or applied by the officers of such society to or for the maintenance of such wife or relative. 42 Vict. c. 12.

If a pauper having no wife or relative so dependent upon him is entitled to any such moneys, no claim is to be made by the guardians upon any such society of which he is a member, until the guardians, or their relieving officer, have declared the relief to be given on loan, and have within thirty days thereof given written notice thereof to the secretary or trustees of the society. *Id.*

SECTION V.—BY EMIGRATION.

Expenses of, how defrayed.] By 4 & 5 Will. 4, c. 76, s. 62, the ratepayers and owners of a parish may raise money on security of rates for expenses of emigration of poor persons having settlements in the parish ; and recover the expenses incurred from persons refusing to emigrate after consenting, or returning.

By 11 & 12 Vict. c. 110, s. 5, guardians may assist in the emigration of paupers rendered irremovable by 9 & 10 Vict. c. 66, and charge the cost upon the common fund of the union, or on the parish.

By 12 & 13 Vict. c. 103, s. 20, the guardians may expend, with the order of the Local Government Board, any sum not exceeding 10*l.* for each person, in and about the emigration of poor persons having settlements in such parish, or in any parish in the union, without a previous meeting of ratepayers, and the guardians are to charge the same to the parish of the settlement, in every case where such poor person resided therein or was removable thereto, at the time of the emigration.

The aggregate amount of money expended in the course of one year about the emigration of such persons is not to exceed half the average yearly poor rate raised in the parish for the three preceding years. As to the disposal of surplus money raised for emigration purposes, see 29 & 30 Vict. c. 113. Guardians may defray the expenses of the emigration of orphans and deserted children, chargeable on any parish, or on the common fund. The consent of an orphan or deserted child is required before the emigration of the child can take place. 13 & 14 Vict. c. 101, s. 4. Very little emigration has taken place at the cost of the poor rate. In 1879 the total number of persons to whom assistance was afforded by boards of guardians was only thirty-four, at a cost to the poor rate of 122*l.* See *9th Report of Local Government Board*.

SECTION VI.—OTHER MODES OF RELIEF.

1. *Providing Land.*

Parish Officers may purchase or hire.] By 59 Geo. 3, c. 12, s. 12, the churchwardens and overseers of any parish, with the consent of

the inhabitants in vestry, may take land belonging to the parish or to the poor into their hands, or may purchase or hire for the parish land within or near such parish, not exceeding [fifty acres, 1 & 2 Will. 4, c. 42], and may employ such persons as they are by law directed to set to work in the cultivation of the same on account of the parish, and are to pay such of the persons so employed as are not supported by the parish reasonable wages; and such persons may recover their wages, and are subject to the like punishment for misconduct as other labourers in husbandry.

Guardians may, with the approval of the Local Government Board, hire, or take on lease, temporarily, or for a term not exceeding five years, any land or buildings, for the purpose of the relief or employment of the poor. 30 & 31 Vict. c. 106, s. 12.

Inclosing Waste.] By 1 & 2 Will. 4, c. 42, s. 1, they may inclose not exceeding fifty acres from any waste or common land lying in or near the parish, with the consent in writing under the hand and seal of the lord and the majority of the commoners, and may cultivate the same for the use of the parish and the poor therein, or may let portions thereof to poor inhabitants, to be cultivated by them on their own account. And by 1 & 2 Will. 4, c. 59, s. 1, they may, with the consent of the Commissioners of the Treasury, inclose not exceeding fifty acres of forest or waste land belonging to the Crown, and lying in or near the parish, for the purpose of cultivating them for the use of the parish and the poor therein.

Rents of lands obtained by churchwardens and overseers under the above Acts are, after deducting all proper charges, to be applied in aid of the poor rate of the parish in which such lands are situated. 36 Vict. c. 19, s. 14.

Where lands so acquired by churchwardens and overseers cannot, in the judgments of the Board of Guardians, be used for the purposes of the Acts, such lands may be sold, exchanged, let, or otherwise disposed of under 5 & 6 Will. 4, c. 69, s. 3.

Letting Allotments.] By 59 Geo. 3, c. 12, s. 13, the churchwardens and overseers may, with the consent of the vestry, let portions of parish land to poor inhabitants of the parish, to be by them cultivated for their own benefit, for such term as is fixed by the vestry.

By the 2 & 3 Will. 4, c. 42, s. 1, the trustees of allotments made under Acts of Parliament for the benefit of the poor, with the churchwardens and overseers, may let portions of such allotments,

not being more than one acre to one individual, as a yearly occupation from Michaelmas, to labourers settled in the parish and dwelling within or near it, at the usual rent.

Sections 4, 5 and 7, provide for payment and recovery of the rent, and for the eviction of the tenant if the rent is four weeks in arrear, or the land has not been duly cultivated. [Rent may be required for the whole year in advance. 36 Vict. c. 19, s. 12.] By section 6, if the tenant refuses to quit, or if any other person unlawfully holds possession, two justices may, on the complaint of the churchwardens and overseers, give them possession of the land. This Act is amended by 36 Vict. c. 19, which makes provision for the management of poor law allotments by a committee of not more than twelve or less than six, where the number of allotment wardens, trustees, &c., is larger than is found convenient for proper management of same.

By the 5 & 6 Will. 4, c. 69, s. 4, all the powers of the preceding Acts are to be exercised (under the control of the Local Government Board) by the overseers, in any parish not under guardians, and by the guardians of a union or parish established by any statute.

2. Naval and Merchant Services.

If any boy not already an apprentice in the merchant service who, or whose parent is receiving relief, is desirous of serving in the navy, the guardians may pay the expenses of forwarding such boy for approval by a competent authority, and for providing outfit, &c. 39 & 40 Vict. c. 61, s. 28. And by 32 & 33 Vict. c. 63, s. 13, the guardians may, with the consent of the Local Government Board, purchase, hire, or otherwise acquire and fit up a ship for training boys to the sea service.

3. Dispensaries and Hospitals.

The Local Government Board may direct the guardians to provide a dispensary, and the guardians may borrow money for that purpose. 30 Vict. c. 6, s. 38. A dispensary committee may be appointed. 32 & 33 Vict. c. 63, s. 12. The guardians are to provide in such dispensary proper medicines and appliances for the care and surgical treatment of the sick poor relieved out of the workhouse. 30 Vict. c. 6, s. 44. The guardians must also provide a room in such dis-

pensary for the medical officer of the union or parish to see such sick poor as attend there for advice. 32 & 33 Vict. c. 63, s. 13.

Guardians may provide for the reception, maintenance, and instruction of any adult pauper, being blind, or deaf and dumb, in any hospital or institution established for the reception of persons suffering under such infirmities. 30 & 31 Vict. c. 106, s. 21. See also p. 316.

4. *Houses.*

How erected.] By the 43 Eliz. c. 2, s. 4, the churchwardens and overseers, by the leave of and by agreement, under his hand and seal, with the lord of the manor whereof any common or waste land in the parish shall be parcel, may erect places of habitation on such waste or common, at the expense of the parish or of the hundred or county, for the impotent poor of the parish, to be used only by them.

5. *Education.*

See *post*, Chapter XVII.

SECTION VII.—CASUAL POOR.

Definition of.] Casual poor are those who, in consequence of accident, calamity, or any other circumstance, require immediate parochial relief, and thus become a burthen upon the funds of the parish in which they may happen to be at the time when the necessity for such relief arises, although their legal settlement is elsewhere. The parish officers must relieve them, and they are not removable to their legal settlement while detained by the effect of such accident, &c. *R. v. St. James, Bury St. Edmunds*, 10 East, 25; *R. v. St. Lawrence, Ludlow*, 4 B. & Ald. 660; *Reg. v. St. Pancras*, 7 A. & El. 750. See as to the removeability of casual poor, Chapter XV., Sect. 1.

Liability for Casual Poor.] The officers of the parish where the casualty occurs are under a legal obligation to relieve the pauper and pay all the necessary expenses. They may be, therefore, sued by the surgeon for medical attendance; *Gent v. Tomkins*, 5 B. & C. 746, n.; or by a parishioner who takes care of the pauper,

Simmons v. Wilmott, 3 Esp. 91. If any of the parish officers stand by and see the services performed and do not object, the law raises an implied promise by them to pay. *Lamb v. Bunce*, 4 M. & Sel. 275; *Tomlinson v. Bentall*, 5 B. & C. 738.

The relief given to casual poor cannot be recovered from the parish to which they belong or from any others than the parish where they are, even in the case of continued illness, unless such parish or persons have expressly promised to pay; the *legal* obligation being cast on the parish where the casualty occurred, and the *moral* obligation imposed on the parish of settlement not being sufficient to support an implied promise. *Atkins v. Banwell*, 2 East, 505; *Wing v. Mill*, 1 B. & Ald. 104; *Paynter v. Williams*, 1 Cr. & M. 810. A stranger, if he directs a surgeon to attend a pauper, is liable to pay the surgeon's bill. *Watling v. Walters*, 1 C. & P. 132.

By the 11 & 12 Vict. c. 110, s. 2, where any poor person having a fixed place of abode in a parish in any union formed under the 4 & 5 Will. 4, c. 76, by reason of accident, bodily casualty or sudden illness occurring to him while in some other parish in which he has no legal settlement, requires relief, the cost of all such relief shall be repaid by the parish or union in which he is or would be otherwise chargeable.

SECTION VIII.—BASTARDS.

Definition of.] A bastard is one begotten out of lawful matrimony; as to married women the rule is, that the issue of a woman married at the time the child was begotten, is in all cases presumed to be legitimate, until it be proved that the husband could not, from a natural impossibility, be the father, or had not, or could not have had, access at a time when by the laws of nature he could be the father of the child. *Banbury Peerage case*, 2 Sel. N. P. 749; *R. v. Luffe*, 8 East, 193; *R. v. Bedall*, 2 Stra. 1076; *Pendrell v. Pendrell*, *Ibid.* 925; *Head v. Head*, 1 Sim. & Stu. 152; 1 Turn. 139. Access, and consequently sexual connection, will be presumed, unless the contrary be proved, but the presumption of sexual intercourse may be rebutted notwithstanding opportunities for it occurred. *Cope v. Cope*, 1 M. & Rob. 269. And the presumption may be rebutted by evidence of the conduct of the

parties. *Morris v. Davies*, 5 Cl. & Fin. 163; *Atchley v. Sprigg*, 33 L. J. Ch. 345; *Gurney v. Gurney*, 32 L. J. Ch. 456; *Selbett v. Ainsley*, 3 L. J. N. S. 583. But the fact of the mother living in open adultery is not alone sufficient to rebut the presumption of legitimacy. *Reg. v. Mansfield*, 1 Q. B. 444. See *Hargrave v. Hargrave*, 9 Beav. 552; *Barony of Saye and Sele*, 1 H. L. Ca. 507. Marriage, though so recent that the child could not have been begotten in wedlock, is *quasi* an admission of the husband that the child is his. 1 *Roll. Abr.* 358; 1 *Bla. Com.* 456. Where a decree of judicial separation exists obedience to it is to be presumed, and the child born of the woman divorced or separated is presumed not to be the husband's; but if the husband and wife are separated by voluntary deed merely, the issue of the wife will be deemed legitimate until non-access be proved. *St. George and St. Margaret*, 1 Salk. 123. A married woman may prove her connection with the putative father; *R. v. Luffe*, 8 East, 193; but neither husband nor wife can give evidence of non-access, nor can they be examined or cross-examined as to collateral facts, for the purpose of proving it. *R. v. Sourton*, 5 A. & E. 180; *R. v. Rook*, 1 Wils. 340. *Goodright v. Moss*, 2 Cowp. 594; *Legge v. Edmonds*, 25 L. J. Ch. 138.

A bastard is not made legitimate by the subsequent marriage of its parents. 20 Hen. 3, c. 9.

Liability to maintain.] By 4 & 5 Will. 4, c. 76, s. 71, the mother, as long as she is unmarried or a widow, is bound to maintain the child until it attain the age of sixteen; and all relief granted to it while under sixteen is to be considered as granted to the mother. But the liability of the mother is to cease on the marriage of the child if a female. There is no legal obligation on the part of the personal representative of the deceased mother of an illegitimate child under sixteen years of age to pay out of the assets for the expenses of its maintenance incurred after the mother's death. *Ruttinger v. Temple*, 32 L. J. Q. B. 1.

By sect. 57, a man marrying a woman having an illegitimate child is bound to maintain it as part of his family until it attains sixteen, or the death of its mother.

By 33 & 34 Vict. c. 39, s. 14, a married woman having separate property is subject to all such liability for the maintenance of her children as a widow is by law subject to.

The mother of a bastard neglecting to maintain it, being able

wholly or in part so to do, whereby it becomes chargeable to any parish or union, is punishable as an idle and disorderly person under 5 Geo. 4, c. 83; and, upon a second conviction, or for deserting her bastard child, whereby it becomes chargeable, is punishable as a rogue and vagabond under 7 & 8 Vict. c. 101, s. 6.

As to custody of bastard child on death, lunacy, or imprisonment of mother, see *post*, p. 360.

It is a misdemeanor for any parish officer to induce any person to contract marriage by threat or promise respecting any application to be made, or any order to be enforced, with respect to the maintenance of any bastard child. 7 & 8 Vict. c. 101, s. 8.

The father of a bastard is not required to give information under 37 & 38 Vict. c. 88, concerning the birth of such child, and the registrar is not to enter in the register the name of any person as father of such child, unless requested by the mother and by the person acknowledging himself to be the father of such child, s. 7.

It is the duty of the mother of a bastard to have it vaccinated, see 30 & 31 Vict. c. 84, ss. 29, 35.

As to the liability of a soldier or marine to support his bastard child, see *ante*, p. 351.

Order of Affiliation.] Any single woman who may be with child, or who may be delivered of a bastard child, may either before the birth of such child, or at any time within a year from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child has within a year after the birth paid money for its maintenance, or at any time within the year next after the return to England of the alleged father, upon proof that he left England within a year from the birth, make application to a magistrate acting for the place where she resides, for a summons to be served on the man alleged by her to be the father of the child, and if such application is made before the birth of the child, the woman is to make a deposition on oath stating who is the father of the child. 35 & 36 Vict. c. 65, s. 3. The term "single woman" includes a widow, *R. v. Wymondham*, 2 Q. B. 541, and a married woman living separate from her husband. *Ex parte Grimes*, 22 L. J. M. C. 153. An English woman in an English ship on the high seas is within the Act. *Marshall v. Murgatroyd*, L. R. 6 Q. B. 31; 40 L. J. M. C. 7. Justices have jurisdiction in all cases where the birth takes place in this country, and the father is present, and it is immaterial what is

the country of the parents or the place of their connection. *Hampton v. Rickard*, 30 L. J. 636.

To entitle a woman to apply under the above section, she must at the date of such application be either unmarried or separated from her husband. *Stacey v. Lintell*, L. R. 4 Q. B. D. 291; 48 L. J. M. C. 108.

The application for an order must be made within forty days after service of summons. 7 & 8 Vict. c. 101, s. 4. The justices are to hear the evidence of such woman, and also any evidence tendered on behalf of the man alleged to be the father, and if the evidence of the mother is corroborated in some material particular by other evidence to the satisfaction of the justices, they may adjudge the man to be the putative father of such bastard; and may also, if they see fit, make an order on the putative father for the payment to the mother of the bastard, or to any person who may be appointed to have the custody of the child under 7 & 8 Vict. c. 101, of a sum of money weekly, not exceeding 5s. a week, for the maintenance and education of the child, and of the expenses incidental to its birth, and of its funeral expenses if it has died before the making of such order, and of the costs of obtaining such order, and if the application be made before the birth of the child, or within two calendar months after, the justices may order such weekly sum to be calculated from the birth. Sect. 4.

Such an order may be enforced by distress and imprisonment. *Id.*

No such order is to be valid, except for the purpose of recovering money previously due under such order, after the bastard has attained thirteen years of age, or died. Sect. 5. The justices may in the order direct that the payments shall continue until the child is sixteen. 35 & 36 Vict. c. 65, s. 5.

All money payable under any such order is to be due and payable to the mother; but after the death of the mother, or whilst such mother is of unsound mind, or confined in any gaol, two justices may appoint some person to have the custody of the bastard, so long as it is not chargeable to any parish or union. Such person may recover any payments due under the order. The clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, is to send a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the

mother resided at the time of the making of such order or appointment. 7 & 8 Vict. c. 101, s. 5.

Every person having the custody of a bastard under an order of justices, who misapplies moneys paid by putative father for the support of the child, or who withholds proper nourishment, or otherwise abuses or maltreats such child, is liable to a penalty of 10*l*. Sect. 8.

After the death of the mother, or if she be incapacitated as aforesaid, so often as any bastard for whose maintenance an order has been made becomes chargeable to any parish or union, by the neglect of the putative father to make the payments, the guardians, or if there be no guardians then the overseers, may make such application for the enforcement of the order as might have been made by the mother; but all payments for maintenance of child, made in pursuance of such application, are to be made to some person appointed by the justices, and on condition that such bastard child cease to be chargeable to such parish or union. Sect. 7.

When any bastard child, for whose maintenance an order has been made on the application of the mother, becomes chargeable to any parish or union, the justices having jurisdiction therein may appoint some relieving or other parish officer, to receive on account of such parish or union such proportions of the payments then due, or becoming due, under the order, as may accrue during the period for which such child is chargeable, and such appointment is to remain in force for one year, and may afterwards be renewed, for the like period, by endorsement by one justice. Any payment so ordered to be made is recoverable in the same manner as payments under an order obtained by the mother. 35 & 36 Vict. c. 65, s. 7.

When a bastard child becomes chargeable to a union or parish the guardians may apply to justices having jurisdiction therein for a summons against alleged father to show cause why he should not contribute to relief of the child. The justices after hearing evidence (see *ante*, p. 360), may make an order on such putative father to pay to guardians, or one of their officers, such sum, weekly or otherwise, towards the relief of the child during such time as the child is chargeable, as they think proper; and any payment so ordered is recoverable in the same way as money payable under an order obtained by the mother: provided that—

1. No payments are to be recoverable under such order, except

in respect of the time during which the child is actually in receipt of relief.

2. An order is not to be made, and if made, shall cease except for the recovery of arrears, when the mother of the child has obtained an order.

3. Nothing in this section is to be deemed to relieve mother of a bastard child from her liability to maintain it.

4. A person against whom an order is made under this section is to have right of appeal.

5. If after an order has been made under this section the mother apply for an order, the order made under this section is to be *prima facie* evidence that the man upon whom the order is made is father of the child. 36 Vict. c. 9, s. 5. By sect. 6, the Local Government Board may issue new forms of proceedings in matters of bastardy. They were issued August 4, 1873.

Costs.] In bastardy proceedings costs may be awarded to and against the parties. 39 & 40 Vict. c. 61, s. 24.

Appeal.] The putative father, &c., may appeal to Quarter Sessions. 7 & 8 Vict. c. 101, s. 4; 8 & 9 Vict. c. 10, ss. 3, 5, 6.

The Court of Quarter Sessions may reduce the amount directed to be paid for the maintenance and education or on account of the relief of the child named in such order, and they are thereupon to alter the order accordingly. 35 & 36 Vict. c. 65, s. 9.

If the Court of Quarter Sessions quash the order, but not on the merits, the mother may apply for a fresh summons against putative father. *R. v. Phillips*, 42 L. T. 772.

SECTION IX.—LUNATICS.

Providing Asylums.] The justices of every county and borough are to provide asylums for pauper lunatics. 16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; 19 & 20 Vict. c. 87; 26 & 27 Vict. c. 110; 28 & 29 Vict. c. 80. Different counties and boroughs may combine for the purpose of providing a common asylum. *Id.*

Committee of Visitors.] At the general or quarter sessions of a county, held next after 20th of December in every year, and at a special meeting of the justices of a borough, to be held within twenty days after the same day, justices are to be elected to form the "committee of visitors" of the asylum. In the case of a county or borough having an asylum for its sole use, number of visitors not to be less than seven; and in other cases, is to be the number pro-

vided for in the agreement. 16 & 17 Vict. c. 97, s. 22 ; ss. 24—28 relate to the proceedings of the visitors.

Workhouse.] No lunatic, insane person, or dangerous idiot is to be detained in a workhouse more than fourteen days, unless in the opinion of medical officer such lunatic is proper person to be kept in a workhouse, and there is sufficient accommodation there. 4 & 5 Will. 4, c. 76, s. 45 ; 25 & 26 Vict. c. 111, s. 20.

The visitors of an asylum, and the guardians for a place within the district for which the asylum has been provided, may make arrangements, subject to approval of Lunacy Commissioners and President of Local Government Board, for the reception and care of a limited number of chronic lunatics in the workhouse in the parish or union. 25 & 26 Vict. c. 111, s. 8 ; 26 & 27 Vict. c. 110, s. 2. Paupers in a workhouse suffering from mental disease may be detained and sent to an asylum. 30 & 31 Vict. c. 106, s. 22.

Guardians may send idiots to asylums, and also idiotic or insane paupers who may lawfully be detained in a workhouse, to a workhouse of any other union or parish with the consent of the guardians, and pay the cost of removal, maintenance, and burial. 31 & 32 Vict. c. 122, s. 13.

Hospitals and Licensed Houses.] Registered hospitals and licensed houses may be provided for reception of pauper and other lunatics. 8 & 9 Vict. c. 100.

If a pauper lunatic is sent from a borough, wholly or partly comprised within a union or parish, to any licensed house or registered hospital, the guardians are only liable for amount which would have been paid for maintenance of lunatic if he had been in the county asylum ; all extra expenses are to be paid by the town council. 39 & 40 Vict. c. 61, s. 26. This does not apply to a borough which has provided or contributed to a pauper lunatic asylum.

Guardians to visit Asylums, &c.] Any physician, surgeon, or apothecary appointed by the guardians of a union or parish or the overseers of a parish, and also such guardians and overseers, are to be permitted, whenever they see fit, between the hours of eight A.M. and six P.M., to visit and examine any pauper lunatic chargeable to such union or parish confined in any asylum, registered hospital, or licensed house. But the medical officer of the asylum, if he is of opinion that it will be injurious to any lunatic to permit such visit and examination, and signs a statement of the reasons, may refuse such visit, &c. ; in which case he is to enter in the medical journal

the reasons set forth in such statement and to sign such entry. 16 & 17 Vict. c. 97, s. 65.

Every pauper lunatic not in an asylum, &c., is to be visited once in every quarter of a year by the medical officer of the parish or union, or district in which such lunatic resides. Within seven days after the end of each quarter, the medical officer is to prepare and send a list of all such lunatics, and to state therein whether, in his opinion, they are or are not properly taken care of, or may or may not properly remain out of an asylum, and is to send such list to the clerk to the guardians of the parish or union, or to one of the overseers of a parish not under guardians; the forms of lists to be furnished by the guardians. Sect. 66. The medical officer is also to make a quarterly return of pauper lunatics in the workhouse. 25 & 26 Vict. c. 111, s. 21.

Sending Lunatics to Asylum.] Every medical officer of a parish or union, who has knowledge that any pauper resident in any parish within his district is a lunatic, is, within three days after obtaining such knowledge, to give notice thereof in writing to a relieving officer of such parish, or (if there be no relieving officer) to one of the overseers, who is within three days to give notice thereof to some justice of the county or borough within which such parish is situate, and thereupon such justice is to require the relieving officer to bring such pauper before him, and the said justice is to call to his assistance a physician, &c., and examine such person; and if such physician, &c., signs a certificate according to the form (F.) in the schedule, and the said justice is satisfied, upon view or personal examination of such pauper or other proof, that such pauper is a lunatic and a proper person to be taken charge of and detained under care and treatment, he is, by an order under his hand, according to the form (F. No. 1) in the schedule, to direct him to be received into such asylum as hereinafter mentioned, or, where hereinafter authorised in that behalf, into some registered hospital or licensed house; and such relieving officer or overseer is immediately to convey or cause to be conveyed the said lunatic to such asylum, registered hospital, &c., and he is to be received and detained therein. A justice may, upon notice being given to him as aforesaid, or upon his own knowledge without such notice, examine any pauper deemed to be lunatic, at his own abode or elsewhere, and proceed in all respects as if he had been brought before him in pursuance of an order. If the pauper cannot, on account of his health

or other cause, be conveniently taken before a justice, he may be examined, at his own abode or elsewhere, by an officiating clergyman of the parish in which he is resident, together with a relieving officer or (if there be no relieving officer) an overseer, and such officiating clergyman and relieving officer or overseer are to call to their assistance a physician, &c.; and upon a certificate of such physician, &c., the officiating clergyman and relieving officer or overseer may make an order as in the former case for the reception of the pauper into an asylum, &c. If the physician, &c., by whom the pauper is examined certifies in writing that he is not in a fit state to be removed, his removal is to be suspended until the same or some other physician, &c., certifies in writing that he is fit to be removed, which certificate every such physician, &c., is required to give as soon as in his judgment it ought to be given. Where a certificate, according to the form (F. No. 3) in the schedule, is signed by the medical officer of the parish or union in which the pauper named therein is resident, as well as by some other person being a physician, &c., called to the assistance of the justice, or clergyman and relieving officer or overseer, such joint certificate, or such two certificates, are to be received by the justices, &c., as conclusive evidence that the person named therein is a lunatic and a proper person to be taken charge of, and they are to make the order for his removal. Sect. 67.

A curate of the parish is the officiating clergyman within the meaning of the section. *R. v. Pemberton and Smith*, L. R. 5 Q. B. D. 95; 49 L. J. M. C. 29; 25 & 26 Vict. c. 111, s. 19.

Wandering Lunatics.] Every constable of any parish or place, and every relieving officer and overseer of a parish, who has knowledge that any person wandering at large within such parish or place (whether a pauper or not) is deemed to be a lunatic, is immediately to apprehend and take, or cause him to be taken, before a justice. Sect. 68.

Penalties.] Medical officers, relieving officers or overseers, omitting to give notice or to apprehend persons in any of the above cases and within the required time, and relieving officers, overseers or constables refusing or wilfully neglecting to convey any person to an asylum, &c., in pursuance of any order, are liable to a penalty not exceeding 10*l*. Sects. 70, 71.

To what Asylum Removal to be.] Every order of a justice, or a clergyman and relieving officer or overseer, for the reception of

a lunatic into an asylum, is to authorise his admission into any asylum or registered hospital or licensed house; but every lunatic is under such order to be first sent to an asylum of the county; and no lunatic is to be sent to any registered hospital or licensed house by virtue of such order, except there be no such asylum into which he can be received, or there be some special circumstances by reason whereof he cannot be taken thereto, which are to be stated in like manner. Sect. 72. Any two Lunacy Commissioners may order the removal of pauper lunatics to asylums, &c. 25 & 26 Vict. c. 111, s. 32.

Maintenance of Lunatics.] Where any lunatic is sent to an asylum, &c., under an order of two justices, if it appears to such justices that he has an estate applicable to his maintenance, and more than sufficient to maintain his family, they may apply in writing to his nearest known relation or friend for payment of the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic. If such charges are not paid within a month after the application, the justices may direct a relieving officer or overseer of the parish from which the lunatic was sent or where any of his property is, to seize and sell so much as is necessary to pay such charges. But the justices may, notwithstanding, in the meantime and until such charges are paid, make an order on the guardians of the union or parish, or the overseers of the parish, from which the lunatic was sent for confinement, for payment of the charges of the removal, &c., of such lunatic; and such guardians and overseers are to be reimbursed such charges, under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same be sooner repaid by some relative or friend of the lunatic, in pursuance of such application as aforesaid. Sect. 94. A similar power is given to justices authorised to make an order for the payment of money for the maintenance of a lunatic. Sect. 104. The liability of any relation or person to maintain any lunatic is not to be taken away or affected where such lunatic is sent to or confined in an asylum, &c., by any provision in the Act concerning the maintenance of such lunatic. Sect. 105.

By 13 & 14 Vict. c. 101, s. 5, and 39 & 40 Vict. c. 61, s. 20, where any married woman being lunatic is duly removed to an asylum, the guardians or overseers of the union or parish to which the lunatic is chargeable, may summon the husband to appear

before the justices having jurisdiction in the union or parish, the guardians whereof shall make the application to show cause why an order should not be made upon him to maintain or contribute towards the maintenance of his wife in such asylum, and such justices may make an order upon him to pay such sum, weekly or otherwise.

If guardians incur any expenses in the relief of a pauper lunatic being a member of a benefit or friendly society, and as such entitled to receive any payment, and not having a wife or other relative dependent upon him for maintenance, they may recover from him as a debt, or from his representatives, in case of his death, the sum so expended by them, and the managing body of that society, after notice from the clerk to the guardians, served previously to the money being paid over, is required to pay the same to such guardians, and is exonerated on payment thereof from any further liability. The guardians may apply to the justices for an order for such payment to be made, but no claim can be made upon any such society until the guardians have declared the relief to be given on loan, and have, within thirty days thereof, notified the same in writing to the secretary and trustee of the society. 39 & 40 Vict. c. 61, s. 23; 42 Vict. c. 12.

If such pauper lunatic has a wife, or other relative dependent upon him for maintenance, such moneys are, subject to any deductions for keeping up his membership required by the rules of such society, to be paid or applied by the officers of such society to or for the maintenance of such wife or relative. 42 Vict. c. 12.

Chargeability of Pauper Lunatics.] Any pauper lunatic confined under the provisions of the Act is, for the purposes of the Act, to be chargeable to the parish from, or at the instance of some officer or officiating clergyman of, which he has been sent, unless and until such parish has established, under the provisions herein contained, that he is settled in some other parish, or it cannot be ascertained in what parish he is settled; and every pauper lunatic chargeable to any parish is, whilst he resides in an asylum, &c., to be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable. Sect. 95.

Orders.] Orders for maintenance, &c., may be removed into Queen's Bench Division by *certiorari*, and without leave of such division may be taken to Court of Appeal. *R. v. Pemberton and Smith*, L. R. 5 Q. B. D. 95; 49 L. J. M. C. 29. The guardians of any union may obtain orders upon the guardians of any other

union, or upon the guardians and overseers of any parish not comprised in a union, or upon the treasurer of the county, and may appeal against or defend in respect of any lunatic paupers made chargeable upon the common fund of the union. 24 & 25 Vict. c. 56, s. 7.

The Board of Guardians of a parish have the same powers. 39 & 40 Vict. c. 61, s. 25.

Order for Maintenance.] Any two justices of the county or borough in which the asylum, &c., in which a pauper lunatic is confined is situate, may make an order for payment to the treasurer, &c., of the asylum, &c., of the reasonable charges of the maintenance, &c., of such lunatic in such asylum, &c. Sect. 96. The cost is to be borne by the common fund of the union comprising such parish. Sect. 6. There is no limit to the retrospective character of such order. *Finch v. York Union*, L. R. 2 Q. B. D. 15; 41 L. J. M. C. 120.

Adjudication of Settlement, &c.] Such justices may at any time inquire into the last legal settlement of such pauper lunatic, and, if satisfactory evidence can be obtained as to such settlement in any parish, such justices are, by order under their hands and seals, to adjudge such settlement accordingly, and to order the guardians or overseers to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred within twelve calendar months previous to the date of such order; and if such lunatic is still in confinement, the reasonable charges of his future lodging, maintenance, &c. Sect. 97. See *R. v. Crediton*, 27 L. J. M. C. 265; 31 L. J. 114; *R. v. St. Giles*, 30 L. J. M. C. 12; *R. v. Faversham*, 31 L. J. M. C. 116; *R. v. Newchurch*, 32 L. J. M. C. 19; *R. v. St. George's*, 32 L. J. M. C. 217; *R. v. Whitby*, 39 L. J. M. C. 97.

Where Settlement cannot be ascertained.] If a pauper lunatic be not settled in the parish by or at the instance of some officer or officiating clergyman of which he is sent to an asylum, &c., and it cannot be ascertained in what parish he is settled, and if a relieving officer of such first-mentioned parish or of the union in which the same is situate, or the overseers of such first-mentioned parish, give ten days' notice to the clerk of the peace of the county in which such lunatic was found to appear for the county before two justices thereof, at a time and place to be appointed in such notice, any two justices may, on the appearance of the clerk of the peace or of any one on his behalf, or, in case of non-appearance, upon proof of his

having been served with such notice, inquire into the circumstances of the case, and adjudge such pauper lunatic to be chargeable to such county, and order the treasurer of such county to pay to the guardians or overseers of any union or parish all expenses incurred within twelve months, and the future charges [as in the last section]. But the justices may delay adjudging the lunatic to be chargeable to the county, until inquiry has been made to ascertain the parish in which he is settled; and the county to which a lunatic is so adjudged to be chargeable may, at any time thereafter, inquire as to the parish in which he is settled, and procure him to be adjudged to be settled there. Sect. 98. See *Middlesex v. All Saints, Poplar*, 29 L. J. M. C. 186; 2 L. J. 215; *Somersetshire v. Shipham*, 32 L. J. M. C. 83; 7 L. J. 673. In the last-mentioned case, justices, &c., may order the guardians or overseers of the union or parish to which he is adjudged to belong to pay all expenses and future charges. Sect. 99.

Orders of Justices, &c., how made.] The adjudication of settlement and order for maintenance may be contained in the same instrument. *Reg. v. Tyrwhitt*, 12 Q. B. 292. And it is no objection to such orders that they were made *ex parte*, and without notice to the parish affected. *Ex parte Monkleigh*, 5 Dowl. & L. 404; *Reg. v. Hatfield Peverel*, 14 Q. B. 298.

Where Lunatic is irremovable.] All the expenses incurred in and about the examination, removal, maintenance, &c., of pauper lunatics removed to an asylum, &c., under the authority of these Acts, who would, at the time of their being conveyed to such asylum, &c., have been exempt from removal to the parish of their settlement or the country of their birth, by reason of some provision in the 9 & 10 Vict. c. 66, are to be paid by the guardians of the parish wherein they have acquired such exemption, if such parish be subject to a separate Board of Guardians, or by the overseers of the parish, where it is not subject to such separate Board; and where such parish is comprised in a union, the same are to be paid by the guardians and charged to the common fund of such union; and no order is to be made upon the parish of the settlement in respect of any such lunatic pauper during the time that the above-mentioned charges are to be paid and charged as herein provided; 16 & 17 Vict. c. 97, s. 102. See *Reg. v. St. Leonards, Shoreditch*, 22 L. J. M. C. 51; *Wigton v. Snaith*, 16 Q. B. 496; *R. v. Manchester*, 26 L. J. M. C. 1; 28 L. J. 369, 99; *R. v. Leeds*, 26 L. J. M. C. 37;

R. v. St. Giles, 30 L. J. M. C. 12 ; *R. v. East Retford*, 32 L. J. M. C. 17 ; and to pauper lunatics born in Ireland and having no settlement in England, who have become irremovable. *Reg. v. Arnold*, 18 Q. B. 553.

Criminal Lunatic.] The liability for the maintenance of criminal lunatics whose settlement is unknown is imposed by 3 & 4 Vict. c. 54 upon the county in which they are confined, and this liability is not altered by the Prisons Act, 1877. *R. v. Mews*, 43 L. T. 403 ; 29 W. R. 66.

Appeal.] Any person or guardians aggrieved by the refusal of an order of justices may appeal to quarter sessions. 16 & 17 Vict. c. 97, ss. 106, 108. The appeal is to the sessions of the county, and not to the sessions for the borough within which the asylum may be situated. *R. v. Kent JJ.*, 36 L. J. M. C. 201.

Notwithstanding 24 & 25 Vict. c. 55, s. 6, which makes a pauper lunatic chargeable to the common fund of the union in which the parish of his settlement is comprised, and s. 7, which gives a right of appeal against such order to the guardians of the union, the overseers of the parish of settlement have still a right of appeal against such order under 16 & 17 Vict. c. 97, s. 108. *R. v. Medway*, L. R. 3 Q. B. 383 ; 37 L. J. M. C. 100.

The jurisdiction to grant costs of an appeal is only in the Court which heard and determined it. *R. v. Staffordshire JJ.*, 26 L. J. M. C. 179.

CHAPTER XIII.

WORKHOUSES.

Building and Maintaining.] Provision was first made for the general establishment of workhouses by 9 Geo. 1, c. 7, s. 4, by which the churchwardens and overseers were empowered, with the consent of the major part of the inhabitants in vestry assembled, to purchase or hire houses, or to contract for the maintenance of the poor, and there to maintain and employ them and take the benefit of their labour; and any poor person refusing to be maintained in such houses was not to be entitled to receive relief.

See *ante*, p. 303, as to building and maintaining.

Power of Local Government Board.] By 4 & 5 Will. 4, c. 76, s. 15, the Local Government Board are to make such rules for the management of the poor, the government of workhouses, and the education of the children therein as they think proper.

The Board have power to enforce provision of drainage, ventilation, &c. 31 & 32 Vict. c. 122, s. 8.

Receiving Poor of other Parishes.] See 12 & 13 Vict. c. 103, s. 14; 14 & 15 Vict. c. 105, s. 6.

Guardians and managers of pauper asylums may contract to receive paupers chargeable to some other union or parish with the consent of the Local Government Board. 39 & 40 Vict. c. 61, s. 22.

Appointment of Officers.] By ss. 46 and 48, the Local Government Board may order the overseers or guardians to appoint paid officers, and may remove any master of the workhouse or other paid officer, and require others to be appointed. See *ante*, p. 322.

Register to be kept.] By sect. 55, the master of every workhouse, or such other paid officer as the Local Government Board may direct, is to keep a register of the name of every person receiving relief within such workhouse, with the particulars respecting their families and settlements, relief and employment.

Rules for the Government of Workhouses.] By an Order of the 24th July, 1847, the guidance, government, and control of every workhouse and of the officers, &c., therein are to be exercised by the guardians of the union; and the following rules and regulations are made:—

Admission of Paupers.] Art. 88. Every pauper who shall be admitted into the workhouse, either upon his first or any subsequent admission, shall be admitted in some one of the following modes only, that is to say:—By a written or printed order of the Board of Guardians, signed by their clerk. By a provisional written or printed order, signed by a relieving officer or an overseer. By the master of the workhouse (or during his absence or inability to act, by the matron), without any order, in any case of sudden or urgent necessity. Provided that the master may admit any pauper delivered at the workhouse under an order of removal to a parish in the union. See 9 & 10 Vict. c. 66, s. 7.

Art. 89. No pauper shall be admitted under any written or printed order, as above mentioned, if the same bear date more than six days before the pauper duly presents it at the workhouse.

Art. 90. If a pauper be admitted otherwise than by an order of the Board of Guardians, the admission of such pauper shall be brought before the Board of Guardians at their next ordinary meeting, who shall decide on the propriety of the pauper's continuing in the workhouse or otherwise, and make an order accordingly.

Classification of the Paupers.] Art. 98. The paupers, so far as the workhouse admits thereof, shall be classed as follows:—

Class 1. Men infirm through age or any other cause.

Class 2. Able-bodied men, and youths above the age of fifteen years.

Class 3. Boys above the age of seven years, and under that of fifteen.

Class 4. Women infirm through age or any other cause.

Class 5. Able-bodied women, and girls above the age of fifteen years.

Class 6. Girls above the age of seven years, and under that of fifteen.

Class 7. Children under seven years of age.

To each class shall be assigned that ward or separate building and yard which may be best fitted for the reception of such class, and each class of paupers shall remain therein without communication with those of any other class.

Art. 99. Provided, firstly, that the guardians shall from time to time, after consulting the medical officer, make such arrangements as they may deem necessary with regard to persons labouring under any disease of body or mind.

Secondly. The guardians shall, so far as circumstances will permit, further sub-divide any of the classes enumerated in Art. 98, with reference to the moral character or behaviour, or the previous habits of the inmates, or to such other grounds as may seem expedient.

Thirdly. That nothing in this order shall compel the guardians to separate any married couple, being both paupers of the first and fourth classes respectively, provided the guardians shall set apart, for the exclusive use of every such couple, a sleeping apartment separate from that of the other paupers.

[By 39 & 40 Vict. c. 61, s. 13, when two persons, being husband and wife, either of whom are infirm, sick, or disabled by any injury, or above the age of sixty years, are received into a workhouse, they may be permitted by the guardians to live together.]

Fourthly. That any paupers of the fifth and sixth classes may be employed constantly or occasionally in any of the female sick wards, or in the care of infants, or as assistants in the household work; and the master and matron shall make such regulations as may enable the paupers of the fifth and sixth classes to be employed in the household work, without communication with the paupers of the second and third class.

Fifthly. That any pauper of the fourth class, whom the master may deem fit to perform any of the duties of a nurse or assistant to the matron, may be so employed in the sick wards, or those of the fourth, fifth, sixth, or seventh classes; and any pauper of the first class, who may by the master be deemed fit, may be placed in the ward of the third class, to aid in the management and superintend the behaviour of the paupers of such class, or may be employed in the male sick ward.

Sixthly. That the guardians, for the special reason to be entered on their minutes, may place any boy or girl between the ages of ten and sixteen years in a male or female ward respectively different from that to which he or she properly belongs, unless the Commissioners shall otherwise direct.

Seventhly. That the paupers of the seventh class may be placed in such of the wards appropriated to the female paupers as shall be

deemed expedient, and the mothers of such paupers shall be permitted to have access to them at all reasonable times.

Eighthly. That the master of the workhouse (subject to any directions given or regulations made by the guardians) shall allow the father or mother of any child in the same workhouse, who may be desirous of seeing such child, to have an interview with such child, at some one time in each day, in a room in the said workhouse to be appointed for that purpose. And the guardians shall make arrangement for permitting the members of the same family who may be in different workhouses of the union, to have occasional interviews with each other, at such times and in such manner as may best suit the discipline of the several workhouses.

Ninthly. That casual poor wayfarers admitted by the master or matron shall be kept in a separate ward of the workhouse, and shall be dieted and set to work, in such manner and under such regulations as the guardians, by any resolution now in force or to be made hereafter, may direct. See *infra*.

Art. 100. The guardians shall not admit into the workhouse or any ward of the same, or retain therein, a larger number or a different class of paupers than that heretofore or hereafter, from time to time, fixed by the Local Government Board; and in case such number shall at any time be exceeded, the fact of such excess shall be forthwith reported to the Board by the clerk.

Discipline and Diet of the Paupers.] See Arts. 102—126.

Casual Wards.] The guardians of every union are to provide casual wards. 34 & 35 Vict. c. 108, s. 9. As to the diet and discipline of casual paupers, see General Order of Local Government Board of November 22, 1871. As to discharge and detention of casual paupers, see 34 & 35 Vict. c. 108, s. 5. See sect. 7 as to punishment of disorderly paupers. As to work to be performed by persons relieved out of the workhouse, see 29 & 30 Vict. c. 113, s. 15.

Misconduct of Paupers.] By 55 Geo. 3, c. 137, s. 1, the overseers may prosecute paupers who pawn or sell apparel, tools, utensils, goods, &c., given them by the parish or who steal any such tools, &c., and the persons who receive or buy them; and the property in such goods and chattels is to be laid in the overseers for the time being, without specifying their names. Sect. 2 directs that the tools, &c., are to be marked, and imposes a penalty of 5*l.* or two months' imprisonment for defacing such marks, or for buy-

ing goods, &c., so marked, or receiving them in pledge, and three months' imprisonment with hard labour upon paupers absconding with any such goods, &c. By sect. 5, if any poor person maintained in any workhouse refuses to work at any employment suited to his age, strength and capacity, or is guilty of drunkenness or other misbehaviour, he is, on conviction before any justice, to be imprisoned and kept to hard labour for not exceeding twenty-one days.

The regulations as to punishments for misbehaviour of paupers are contained in the Order of 24th July, 1847. Arts. 127—147.

By 54 Geo. 3, c. 170, s. 7, no master, &c., is to punish with any corporal punishment whatever any *adult* person under their charge for any offence or misbehaviour whatever, or to confine any such person whatsoever for any offence or misbehaviour for a longer time than twenty-four hours, or such further time as may be necessary to bring him before a justice. By 56 Geo. 3, c. 129, s. 2, no governor, &c., of any workhouse is on any pretence to chain, or confine by chains or manacles, any poor person of sane mind.

Art. 143. The master shall keep a book, to be furnished him by the guardians, in which he shall duly enter,—Firstly. All cases of refractory or disorderly paupers, whether children or adults, reported to the guardians for their decision thereon. Secondly. All cases of paupers, whether children or adults, who may have been punished without the direction of the guardians, with the particulars of their respective offences and punishments.

Art. 145. Such book shall be laid on the table at every ordinary meeting of the guardians, and every entry made in such book since the last ordinary meeting shall be read to the Board by the clerk. The guardians shall thereupon, in the first place, give direction as to any confinement or other punishment of any refractory or disorderly pauper reported for their decision, and such direction shall be entered on the minutes of the proceedings of the day, and a copy thereof shall be inserted by the clerk in the book specified in Art. 143. The guardians, in the second place, shall take into their consideration the cases in which punishments are reported to have been already inflicted by the master or other officer, and shall require the master to bring before them any pauper so punished who may have signified a wish to see the guardians. If the guardians in any case are of opinion that the officer has acted illegally or

improperly, such opinion shall be entered on the minutes, and shall be communicated to the master, and a copy of the minute of such opinion shall be forwarded to the Local Government Board by the clerk.

Art. 146. If any pauper above the age of fourteen years unlawfully introduce or attempt to introduce spirituous or fermented liquor into the workhouse, or abscond from the workhouse with clothes belonging to the guardians, the master may cause such pauper to be forthwith taken before a justice of the peace, to be dealt with according to law; and whether he do so or not, he shall report every such case to the guardians at their next ordinary meeting.

By the 4 & 5 Will. 4, c. 76, s. 92, any person carrying, bringing or introducing, or attempting or endeavouring to carry, &c., into any workhouse any spirituous or fermented liquor, without the order in writing of the master, may be apprehended by the master or any officer acting under his direction, and carried before a justice, who is empowered to determine the offence in a summary way. Sect. 93 imposes a penalty of 20*l.* on any master allowing the use or introduction of spirituous or fermented liquor (except for the use of themselves and the officers and their families), or ill-treating paupers. Sect. 94 requires them to hang up copies of the two preceding clauses in the workhouse, under a penalty of 10*l.*

By the 55 Geo. 3, c. 137, s. 2 [altered by 7 & 8 Vict. c. 101, s. 58], persons deserting or running away from a workhouse, and carrying away with them any clothes, linen or other things, the property of the guardians, may, on conviction, be committed to prison for not less than seven days, nor more than three months.

As to discharge and detention of paupers, see 34 & 35 Vict. c. 108.

Art. 147. The master shall cause a legible copy of Arts. 127 to 131 to be kept suspended in the dining-hall of the workhouse, or in the room in which the inmates usually eat their meals, and also in the board-room of the guardians.

Inspection of Workhouses.] By 30 Geo. 3, c. 49, s. 1, any justice, or any physician, surgeon or apothecary, or the officiating clergyman of the parish, authorised by the warrant of a justice, may at all times in the daytime visit any workhouse within the jurisdiction of such justice, and examine into the condition of the poor therein and of such house; and if such visitor, so authorised,

finds cause of complaint, he may certify the state and condition of the house and of the poor therein to the next quarter sessions, under his hand and seal, and cause the overseers of the poor or the governor of the house to be summoned to appear at the sessions to answer the complaint; and the justices in sessions may make orders for removing the cause of complaint.

By sect. 2, if such visitor, so authorised, finds any of the poor afflicted with any contagious or infectious disease, or in want of medical or other assistance, or of proper food, or requiring separation, he may (if a justice) apply to another justice, and certify to him the state of the poor in such workhouse; or, if the visitor be one of the persons duly authorised as above, the application is to be made to two justices, who are thereupon to order medical assistance, &c., as they think proper, until the next quarter sessions, at which they are to certify the same under their hands and seals to the assembled justices, who are to make such order as they think proper. By sect. 3, this does not extend to any workhouse incorporated or regulated by special Act of Parliament.

As to inspecting houses in which poor are maintained under contract, see 12 & 13 Vict. c. 13, ss. 7, 8.

Visiting Committee.] By the Order of 24th July, 1847, Art. 148, the guardians shall appoint one or more *Visiting committees* from their own body; and each of such committees shall carefully examine the workhouse or workhouses of the union once in every week at the least; inspect the last reports of the chaplain and medical officer; examine the stores; afford, so far as is practicable, to the inmates an opportunity of making any complaints, and investigate any complaints that may be made to them.

Art. 149. The visiting committee shall from time to time write such answers as the facts may warrant to the queries, which are to be printed in a book entitled the "Visitors' Book," to be provided by the guardians, and kept in every workhouse for that purpose, and to be submitted regularly to the guardians at their ordinary meetings.

The visiting committee are, once at least in every quarter, to enter in a book provided and kept by the master of the workhouse such observations as they may think fit with respect to dietary, accommodation, and treatment of lunatics, being in the workhouse. 25 & 26 Vict. c. 111, s. 37.

Where the guardians neglect to appoint a visiting committee, or

where three months have elapsed during which such committee has neglected to visit the workhouse, the Local Government Board are required to appoint a visitor, not being one of the guardians, at a salary to be fixed by them, to be paid out of the general fund of the union. The appointment of such paid visitor is to cease at the expiration of three calendar months next after the appointment of a visiting committee by the guardians, subject nevertheless to his reappointment in case of any repetition of such neglect of the guardians or visiting committee as aforesaid. 10 & 11 Vict. c. 109, s. 24.

Cleansing and Repairing the Workhouse.] Art. 150. The guardians shall, once at least in every year, and as often as may be necessary for cleanliness, cause all the rooms, wards, offices and privies belonging to the workhouse to be limewashed.

Art. 151. The guardians shall cause the workhouse and all its furniture and appurtenances to be kept in good and substantial repair; and shall, from time to time, remedy without delay any such defect in the repair of the house, its drainage, warmth or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates.

Births and Deaths.] As to the registration of births and deaths in a workhouse, see 7 & 8 Vict. c. 101, s. 56, and 39 & 40 Vict. c. 61, s. 21.

As to the burial of paupers, see *ante*, p. 57.

CHAPTER XIV.

PAROCHIAL SETTLEMENTS.

- SECTION
- I. *Settlements in General.*
 - II. *By Residence in Parish Three Years.*
 - III. *By Renting a Tenement.*
 - IV. *By Payment of Rates.*
 - V. *By Estate.*
 - VI. *By Apprenticeship.*
 - VII. *Derivative Settlements.*
 - VIII. *By Birth.*

SECTION I.—SETTLEMENTS IN GENERAL.

Settlement, Definition of.] A settlement is the right acquired in any one of the modes pointed out by the poor laws to become a recipient of the benefit of those laws, in that parish or place which provides for its own poor, where the right has been last acquired.

Settlement, how acquired.] A settlement may be acquired either by the act of the party himself, or derivatively from another. The former of these modes comprehends residence for three years in a parish; renting a tenement; payment of rates; estate; and apprenticeship. The other mode is by derivation, in right of another who has previously acquired it, and without any act of the party entitled to the derivative settlement. In this case, such a relation subsists between the two persons that the settlement of the one, by operation of law, devolves upon the other, who is regarded as dependent upon him.

A derivative settlement may be acquired, either by marriage, which entitles the wife to the husband's settlement, or by parentage, which is the settlement legitimate children under the age of sixteen acquire in right of one or other of their parents.

The third and remaining kind of settlement vests in the individual in his own right, but without any act of his own, being acquired by birth. This is the settlement which may be resorted to in default of any other, if the individual be born in any parish in England or Wales.

The importance of the law of settlement has been materially diminished by 28 & 29 Vict. c. 79, s. 8, which confers the status of irremovability by *one* year's residence in a parish. See *post*, p. 398.

A Select Committee of the House of Commons in 1879 recommended that in England the law of removal should be abolished, and that, for the purposes of poor relief, settlement should be disregarded, with the exception of relief granted at seaports, to persons landing in a destitute condition.

SECTION II.—BY RESIDENCE IN PARISH THREE YEARS.

By s. 34 of 39 & 40 Vict. c. 61, where any person has resided for three years in any parish, in such manner and under such circumstances in each of such years as would in accordance with the several statutes in that behalf render him irremovable, he is to be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise; provided that an order of removal in respect of a settlement so acquired is not to be made upon the evidence of the person to be removed, without such corroboration as the justices or court think sufficient.

The section is to be read retrospectively. *Westbury-on-Severn v. Barrow-in-Furness*, L. R. 3 Ex. D. 88; 47 L. J. M. C. 79. A person who has resided in a parish for three years, but whose residence therein has ended before the passing of the Act, does not acquire a settlement under this section; *R. v. Ipswich Union*, L. R. 2 Q. B. D. 269; 46 L. J. M. C. 207; but a person who has resided for the three years and has continued to reside until the passing of the Act, but during the period subsequent to the three years was in receipt of relief from the parish, does acquire a settlement therein. *Brampton Union v. Carlisle Union*, L. R. 3 Q. B. D. 479; 47 L. J. M. C. 114. *R. v. Leeds Union*, L. R. 4 Q. B. D. 323; 48 L. J. M. C. 129; *R. v. Abergavenny Union*, W. N. Dec. 4, 1880.

SECTION III.—BY RENTING A TENEMENT.

In order to ascertain whether a person has acquired a settlement by renting a tenement it was necessary to look to the date of such renting, as there were several periods in which the conditions necessary to obtain a settlement by this means differ from each other, but inasmuch as any questions can now hardly arise on rentings of tenements before 14th of August, 1834, the law respecting them is here omitted.

The 13 & 14 Car. 2 makes it lawful for two justices to remove within forty days upon complaint by churchwardens or overseers all persons coming to settle in tenements under the yearly value of 10*l.* that have become [actually chargeable, 35 Geo. 3, c. 101, s. 1] to the parish. To acquire a settlement by the yearly hiring of a tenement or land, the tenement must consist of a separate and distinct dwelling-house or building, or land, or both; must all be in the parish in which the party dwells or resides; must be *bond fide* rented at 10*l.* a year; must be rented for one whole year; must be actually occupied during one whole year, and one year's rent must be actually paid. 59 Geo. 3, c. 50; 6 Geo. 4, c. 57, s. 2; 1 Will. 4, c. 18.

The taking of a tenement at a yearly rent to be paid weekly, quarterly, &c., but either party to be at liberty to give three months' notice from any quarter day, is a yearly hiring within the above Acts. *R. v. Hurstmonceaux*, 7 B. & C. 551; *Hastings v. St. James, Clerkenwell*, L. R. 1 Q. B. 38. The rent must be 10*l.* for the whole year. *R. v. West Ardley*, 32 L. J. M. C. 255. There must be a forty days' residence to complete the settlement. *R. v. Ditchet*, 9 B. & C. 176.

By the 4 & 5 Will. 4, c. 76, s. 66, no settlement can be acquired since the 14th August, 1834, by occupying a tenement, unless the person occupying the same has been assessed to the poor rate and has paid the same, in respect of such tenement, for one year. Where the rate is imposed on the tenement, but the name of the party rated is not mentioned in the rate, and it is demanded of and paid by the occupier, it is a sufficient assessment of him. *R. v. Hulme*, 4 Q. B. 538. Payment of rates by one joint tenant is a payment by both. *Reg. v. Huthwaite*, 18 Q. B. 447.

SECTION IV.—BY PAYMENT OF RATES.

Origin of this Settlement.] The 3 Will. & M. c. 11, s. 6, enacts that if any person, who comes to inhabit in any town or parish, is charged with and pays his share towards the public taxes or levies of the said town or parish, he shall be deemed to have a legal settlement there.

A man may gain a settlement by payment of taxes, though the premises are not of sufficient value to confer a settlement by estate. *R. v. Uffculme*, Burr. 430. The payment must be of the whole rate charged. *R. v. Everton*, 29 L. J. M. C. 165. Payment by another may be equivalent to payment by himself (*R. v. Bridgewater*, 3 T. R. 550), if paid by his authority. *R. v. Bridgnorth*, 10 Ad. & E. 66. But payment by a person who is not authorised is insufficient, unless ratified by the occupier. *R. v. Bengeworth*, 23 L. J. M. C. 124.

The settlement is not lost by the landlord refunding to the tenant the amount of taxes paid; *R. v. Openshaw*, Burr. S. C. 522; but it is if the landlord agreeing to pay them does so. *R. v. South Kilvington*, 13 L. J. M. C. 3.

To gain this settlement the party must also inhabit (6 T. R. 536) and reside in the parish forty days after he has been charged with and paid such taxes. *R. v. Ringstead*, 7 B. & C. 607.

Rates.] The land tax is within the Act. *R. v. Bramley*, Burr. S. C. 75. So is a borough improvement rate under a local Act. *R. v. St. Thomas*, L. R. 5 Q. B. 371; 39 L. J. M. C. 83; and watch rates under 5 & 6 Will. 4, c. 76, and 7 Will. 4 & 1 Vict. c. 81. *R. v. Everton*, 29 L. J. M. C. 165; but not a watch rate in a city ward. *R. v. Christchurch*, 8 B. & C. 660.

The tenement in respect of which the taxes, &c., are paid, must be of the yearly value of 10*l.* 35 Geo. 3, c. 101, s. 4. The yearly value is the criterion and not the sum at which the tenant is actually rated, and where the fixtures made the value amount to 10*l.*, the court held that the pauper gained a settlement without regard to the amount of rate or value fixed in the assessment. *R. v. St. Dunstan's*, 4 B. & C. 686.

By 6 Geo. 4, c. 57, in order to acquire a settlement by paying parochial rates, all the conditions must be observed and fulfilled which suffice to give a settlement by renting a tenement. See *ante*, p. 381.

SECTION V.—BY ESTATE.

Foundation of this Settlement.] The principle upon which this settlement is founded is, that a party cannot be removed from a parish in which he has an estate in land, and in which he has resided for forty days. This seems to extend to any interest in things immoveable situate within a parish, since as they cannot be taken by a man to his place of settlement, he must be allowed to remain where they are for the purpose of superintending them. 2 *Nol. P. L.* 58; *R. v. Aythrop Rooding*, Burr. S. C. 412.

What Estate necessary.] With the exception of estates purchased, any estate in land, whatever be its value, and whether it be freehold or copyhold, and whether it be held in fee simple, fee tail, for life, or a term of years, will suffice to confer a settlement. A copyhold estate will confer a settlement, even before admittance. *R. v. Thruscross*, 1 A. & E. 126.

If a person acquires such an estate by descent, devise, or marriage, whatever be the value, and resides on it, or in the same parish, for forty days, though he part with it immediately afterwards, he gains a settlement. *R. v. Great Farringdon*, 6 T. R. 679; *R. v. Sundrish*, 2 Str. 983; *R. v. Dornstone*, 1 East, 296. And this is so where the estate devised is held merely from year to year, and is under the yearly value of 10*l.* *R. v. Stone*, 6 T. R. 295.

Licence to occupy.] A mere permission to occupy land, &c., is not sufficient to give a settlement by estate. *Reg. v. St. Mary, Castlegate*, 21 L. J. M. C. 106.

Incomplete Purchase.] The principle deducible from the cases is, that the relation of trustee and *cestui que trust*, at least, must be created, to give a settlement, where there has been an incomplete purchase. *R. v. Geddington*, 2 B. & C. 129.

Right or Franchise.] A mere right or franchise, falling short of an interest in land, is not sufficient to give a settlement by estate; as, for instance, the right of freemen of a borough to turn cattle on the waste, which is only a personal privilege. *R. v. Warkworth*, 1 M. & Sel. 473.

Where the Estate is purchased.] The 9 Geo. 1, c. 7, s. 5, provides that no person shall be deemed, adjudged, or taken to gain a settlement for or by virtue of any purchase of any estate or interest, whereof the consideration of such purchase does not amount to 30*l. bonâ fide* paid, for any longer or further time than such person

inhabits in such estate; and he is then liable to be removed to his last place of settlement.

To what cases the Act applies.] In order that the statute may apply, the consideration for the purchase must consist wholly of money; and, therefore, a conveyance in consideration of natural love and affection; *R. v. Marwood*, Burr. S. C. 386; *R. v. Ingleton*, Burr. S. C. 560; or of that and money; *R. v. Ufton*, 3 T. R. 251; *R. v. Hatfield Broad oak*, 3 B. & Ad. 566; see *R. v. Lydlinch*, 4 B. & Ad. 150, is not within the Act. *R. v. Piddlehinton*, 3 B. & Ad. 460.

The statute is satisfied if 30*l.* be *bonâ fide* paid for the purchase, whether that be the value of the estate or not. If 30*l.* be actually paid, though part of this consists of fines, fees or expenses, or is paid, without fraud, by the parish officers, it is sufficient. *St. Paul's Walden v. Kempton*, Fol. 238. Nor will an estate purchased for less than 30*l.*, but afterwards raised to that value by improvements, confer a settlement. *R. v. Dunchurch*, Burr. S. C. 553; 1 W. Bla. 596; *Wendron v. Stithian's*, 4 E. & B. 147.

A purchase for 39*l.*, actually paid by the purchaser, but 30*l.* of which he had borrowed, is sufficient. *R. v. Tetford*, Burr. S. C. 57. But a purchase for 60*l.*, the property being already mortgaged for 50*l.*, and 10*l.* only being paid, the mortgage remaining is insufficient. *R. v. Olney*, 1 M. & Sel. 387; *R. v. Mattingley*, 2 T. R. 12. But if the mortgage be paid off, though another of the same amount be immediately granted, it is otherwise. *R. v. Chailey*, 6 T. R. 755.

A mortgage is a purchase within this Act; *R. v. Stockland*, 2 Str. 1162; Burr. S. C. 169; and a purchase by a felon, unpardoned, is sufficient. *R. v. Haddenham*, 15 East, 463. A grant of land by a lord of the manor at a quit-rent is also within the Act. *R. v. Hornchurch*, 2 B. & Ald. 189; *R. v. Martley*, 5 East, 40. But not a licence at a quit-rent, *R. v. Hagworthingham*, 1 B. & C. 634. As to the grant of a lease in consideration of past improvements, see *Wendron v. Stithians*, 24 L. J. M. C. 1; *R. v. Belford*, 32 L. J. M. C. 156.

Effect of Fraud.] If a party, having parted with his interest in property, fraudulently obtains possession and resides on it, this will not give a settlement. *R. v. St. Michael's, Bath*, 2 Doug. 630; see *R. v. Great Glenn*, 5 B. & Ad. 188; *R. v. Owersby-le-Moor*, 15 East, 356.

Residence.] In order to acquire a settlement by estate, the party

must reside forty days in the parish in which his estate lies, and while his interest in it continues. A person, therefore, cannot be removed to a parish in which there is an estate which has descended on him, but where he has never resided. *Wookey v. Hinton Blewet*, 1 Str. 476. But it is immaterial whether the residence be of a permanent character, provided it continues for forty days. *R. v. Houghton-le-Spring*, 1 East, 247. And the days need not be consecutive; *R. v. Knivesborough*, 16 Q. B. 446.

Must be within ten miles.] By 4 & 5 Will. 4, c. 76, s. 68, no person shall retain any settlement gained by virtue of any possession of an estate or interest in any parish for any longer time than such person shall inhabit within ten miles thereof; and in case any person shall cease to inhabit within such distance, and thereafter become chargeable, such pauper shall be liable to be removed to the parish wherein, previously to such inhabitancy, he may have been legally settled, or in case he may have, subsequently to such inhabitancy, gained a legal settlement in some other parish, then to such other parish. *Reg. St. Giles-in-the-Fields*, 2 Q. B. 446; *Reg. v. Saffron Walden*, 9 Q. B. 76; *R. v. Whissendine*, 2 Q. B. 450.

SECTION V.—BY APPRENTICESHIP.

General Requisites.] The settlement by apprenticeship is founded upon the 3 Will. & M. c. 11, s. 8, which enacts, that “if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.”

The Binding in ordinary Cases.] This must be by deed, duly stamped and executed with the usual formalities. *R. v. Ditchingham*, 4 T. R. 769. In the case of voluntary bindings, that is, where the apprentice binds himself, both master and apprentice should be parties to the deed, and it is essential that it should be executed by the latter, and an execution by the boy's father is not equivalent. *R. v. Cromford*, 8 East, 25; *R. v. Ripon*, 9 East, 295. But execution by the master is only material to give the apprentice a remedy against him. *R. v. St. Peter's on the Hill*, 2 Bott, 367. The age of the person binding himself is immaterial, so as he be not under the age of seven years. *R. v. Saltern*, 1 Bott, 613; *R. v. Arundel*, 5 M. & Sel. 257.

To whom.] It is immaterial what is the master's condition in life, or whether he exercises any trade, if there is no fraud. Thus, a female may be bound to a day labourer, to learn the art of a housewife. *R. v. St. Margurel's, Lincoln*, Burr. S. C. 728. And though the master be himself a minor, the binding is good. *R. v. Petrox, Dartmouth*, 4 T. R. 196. But in the case of parish apprentices, see the Orders of the Local Government Board, *post*, p. 388.

Term for which bound.] The 5 Eliz. c. 4, directs that the binding shall be for seven years, and the 43 Eliz. c. 2, enacts, that male apprentices shall be bound till they are twenty-one, and females till they are twenty-one or the time of their marriage; but these statutes are merely directory, and indentures not made in conformity thereto are voidable only at the option of the parties. *R. v. St. Nicholas, in Ipswich*, 2 Str. 1066.

Consideration to appear.] The full sum of money, and the value of any other matter or thing paid, given, assigned or secured to or for the benefit of the master in respect of any apprentice . . . is to be fully and truly set forth in an instrument of apprenticeship. And if any such sum or other thing be so paid, given, assigned or secured, and no such instrument be made, or if any such instrument be made, and such sum or the value of such thing be not set forth therein, the master, and also the apprentice himself if of full age, and any other person being a party to the contract, or by whom any such sum is paid, given or secured is to forfeit the sum of 20*l.*, and the contract and the instrument (if any) containing the same is to be null and void. 33 & 34 Vict. c. 97, s. 40.

Stamp Duties.] By 33 & 34 Vict. c. 97, s. 39, apprenticeship indentures with premium are charged 5*s.* for every 5*l.* or fractional part thereof.

An indenture to two masters to serve part of the term with the one and the rest with the other, requires only one stamp. *R. v. Louth*, 8 B. & C. 247; *R. v. Leighton*, 4 T. R. 732; *R. v. Wantage*, 1 East, 601; *R. v. Bradford*, 1 M. & S. 151; *R. v. Barmston*, 7 A. & E. 858.

Exemptions from Duty.] The 55 Geo. 3, c. 184, exempts from duty indentures for placing out poor children apprentices by or at the sole charge of a parish or township, or any public charity, or pursuant to the 32 Geo. 3; and also assignments of such poor apprentices, provided no other consideration be given to the new master than is given by a parish, &c. See inden-

tures of apprenticeship under 7 & 8 Vict. c. 112, and 13 & 14 Vict. c. 93.

Parish Apprentices—Binding.] The churchwardens and overseers, or the greater part of them, by the assent of two justices, may bind any children, whose parents they adjudge not able to maintain them, to be apprentices, where they see convenient, till such man-child come to the age of [twenty-one years, 18 Geo. 3, c. 47], and such woman-child to the age of twenty-one, or marriage. 43 Eliz. c. 2, s. 5.

But by the 7 & 8 Vict. c. 101, s. 12, no poor child is to be bound apprentice by the overseers of any parish in a union or under guardians, but the guardians are to bind, and to execute the indentures, and no allowance, assent or execution by justices is required. The guardians are to have all the powers for binding apprentices possessed by overseers, and the apprentices are to be registered under the 42 Geo. 3, c. 46.

Parish Indentures.] The parish officers must be parties to and execute a parish indenture.

The law having given to parish officers the power of putting out pauper children as apprentices, it is not necessary that the apprentice should be a party to the deed; if the master and parish officers sign the indenture, it will be valid; *R. v. St. Nicholas, Nottingham*, 2 T. R. 726; the consent of the apprentice is implied if he lives under the binding. *R. v. Woolstanton*, 1 Bott, 606. And it need not be even executed by the master. *R. v. Fleet*, Cald. 31.

By 3 & 4 Will. 4, c. 63, s. 2, indentures executed under their corporate seal, by directors, guardians, and other officers of incorporated hundreds, parishes, and other districts, authorised to bind poor persons apprentices, are to be deemed good and valid. See *R. v. Lutterworth*, 3 B. & C. 487; and see 51 Geo. 3, c. 80, and 54 Geo. 3, c. 107.

Allowance of Indenture.] The 56 Geo. 3, c. 139, s. 1, requires the same justices who made the order for binding to sign their allowance of the indenture of apprenticeship before it is executed by any of the other parties. See *Reg. v. Ashburton*, 8 Q. B. 871. One metropolitan police magistrate may sign the allowance. *Reg. v. St. George, Bloomsbury*, 16 Q. B. 1005; and see 56 Geo. 3, c. 139; and 3 & 4 Will. 4, c. 63.

Allowance where Parish Officers are not Parties.] By the 56 Geo. 3, c. 139, s. 11, no indenture of apprenticeship, by reason of

which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual unless approved by two justices under their hands and seals, according to the provisions of the 43 Eliz. c. 5, and of this Act.

This section applies to cases where some part of the expense is borne by the parish, but the parish officers do not join in the indenture; and this allowance must be under seal, and not signed only, otherwise it will be void. *R. v. Stoke Damerel*, 7 B. & C. 563; *R. v. St. Paul, Exeter*, 10 B. & C. 12. This section is confined to indentures of poor children. *R. v. St. John, Bedwardine*, 5 B. & Ad. 169.

Register of Parish Apprentices.] By the 42 Geo. 3, c. 46, s. 1, the overseers are to enter in a book, to be provided by them, the name of every child bound apprentice by them, together with the other particulars in the schedule to the Act. See 7 & 8 Vict. c. 101, s. 12, which imposes the same duty on guardians.

Orders of Local Government Board.] The Local Government Board may prescribe the duties of masters to whom poor children are apprenticed, and the terms and conditions to be inserted in the indentures, and any master who wilfully refuses or neglects to perform them is liable to a penalty of 20*l.* 7 & 8 Vict. c. 101, s. 12.

Regulations have accordingly being made by the Consolidated Order of 24th July, 1847, Arts. 52—74, which are, however, applicable only to bindings by guardians.

Apprentices to the Sea Service.] By 4 & 5 Will. 4, c. 76, s. 67, no settlement can be acquired by being apprenticed to the sea service.

The statute under which children may now be apprenticed to the sea service by overseers or guardians is the 17 & 18 Vict. c. 104, ss. 141 to 145.

Apprentices to Chimney-Sweepers.] The 3 & 4 Vict. c. 85, s. 2, prohibits the apprenticing any child under sixteen to a chimney-sweeper, and all such indentures are to be void. It is unlawful to compel or allow any one under the age of twenty-one to climb chimneys for the purpose of sweeping, &c. 27 & 28 Vict. c. 37, makes it unlawful for a chimney sweeper to employ a child under the age of ten years to do any work about the trade of such chimney-sweeper except in his place of business, Sect. 1; and also to take with him when entering a house to sweep a chimney any person

under sixteen, Sect. 2. Chimney-sweepers are now required to take out an annual certificate, issued by the chief officer of the police district. 38 & 39 Vict. c. 70.

Apprentices to Miners.] No boy under the age of ten, or girl of any age, can be bound to work in collieries underground, 35 & 36 Vict. c. 76, nor boy under the age of twelve, or girl of any age, in metalliferous mines underground. 35 & 36 Vict. c. 77.

An articulated clerk to a solicitor may gain a settlement as an apprentice. *Clapham v. St. Pancras*, 29 L. J. M. C. 141.

Assignment of Apprentices.] An apprentice may be assigned or transferred to a new master with the consent of the original master. *Caister v. Eccles*, 1 Ld. Raym. 683. The service under the assignment is, constructively, a service with the original master. . It must, therefore, be under the original contract and indenture, otherwise it is not effectual to give a settlement. *R. v. Whitchurch*, 1 B. & C. 574 ; *R. v. Shipton*, 8 B. & C. 88.

Assignment of Parish Apprentices.] A parish apprentice can only be assigned by the consent of two justices, in the manner prescribed by 32 Geo. 3, c. 57, s. 7, which is directed to be by indorsement upon the indenture ; and the new master is also by indorsement on the counterpart, or by writing under his hand, to declare his acceptance of the apprentice, and acknowledge that he becomes bound by all the covenants ; and the apprentice is thereupon to be deemed to be his apprentice to all intents and purposes, and the new master becomes subject to the authority of justices.

Covenant for Maintenance.] By 32 Geo. 3, c. 57, s. 6, if the original master of a parish apprentice (with whom, by sect. 9, not more than 5*l.* has been given as premium) shall, during the apprenticeship, or if his executors shall, during three months after his death, refuse or neglect to maintain and provide for any such apprentice, according to the terms of the covenant, two justices, on the complaint of the apprentice or the churchwardens, may, by warrant under their hands and seals, levy by distress and sale of the effects or assets of such master such sum as is necessary for the clothing and maintenance of the apprentice, and for reimbursing the churchwardens, &c., for any sums expended by them for that purpose.

Inhabitaney by Apprentice.] There must be an inhabiting in some parish for forty days under the indenture. See *Reg. v. Flockton*, 2 Q. B. 535. The inhabitaney is where the apprentice sleeps, and the settlement is gained there, though the service be in another

parish. *St. John v. St. James*, 1 Str. 594. The forty days need not be consecutive, *R. v. Gainsborough*, Burr. S. C. 586, nor within one year. *R. v. Aldstone*, 2 B. & Ad. 207. But where the apprentice resides alternately in two parishes, the settlement is gained where he lodges for the last forty days of the apprenticeship, *R. v. Brighthelmston*, 5 T. R. 188, even though he does no service during that time; *R. v. Charles*, Burr. S. C. 707; *R. v. Burton-upon-Irwell*, 32 L. J. M. C. 102, unless he lodge there merely on account of illness, *R. v. Barmby-in-the-Marsh*, 7 East, 381, for the lodging must be for the purposes of the apprenticeship. *R. v. Gvinear*, 1 A. & E. 152. If he perform services generally, for and at the command of his master, in the parish where he sleeps on account of illness, though he do not actually work at his trade. *Reg. v. Somerby*, 9 A. & E. 310. And the fact of the master contributing to his maintenance during his absence may be sufficient to connect the residence with the indentures. *R. v. Banbury*, 3 B. & Ad. 706; *R. v. Linkinhorne*, 3 B. & Ad. 413. Where an apprentice, not being wanted, was allowed by his master to go to school, the residence there was held not to be as apprentice. *R. v. St. Mary Bredin, Canterbury*, 2 B. & Ald. 382. So a mere casual residence in a parish will not give a settlement. *R. v. Smarden*, 13 East, 452; *R. v. Ribchester*, 2 M. & Sel. 135. In these cases it was held that no settlement was gained in the parish where the apprentice last slept.

Residence and Service must concur.] The residence must be for forty days while the apprentice is serving under the indentures. *Reg. v. JJ. W. R. Yorkshire*, 2 Dowl. N. S. 707. When the apprentice resides with his master, no question can arise as to the residence being in furtherance of the indentures. *R. v. Burslem*, 11 A. & E. 52; *R. v. Foulness*, 6 M. & Sel. 351.

If the apprentice be allowed to sleep in another parish, as a matter of indulgence, he gains no settlement there in consequence. *R. v. Ilkestan*, 4 B. & C. 64. Where the master and apprentice were both in the local militia at B. during the last forty days, the apprentice was holden to have gained a settlement in B. *R. v. Chelmsford*, 3 B. & Ald. 411. But where the apprentice is absent from the master, the service must be actually or constructively going on, to enable the apprentice to gain a settlement during that time. *R. v. Brotton*, 4 B. & Ald. 84.

Service with a third Party.] Service during the term with a third party is sufficient, if it be by his master's directions, and his

master receive his earnings. *R. v. St. George's, Hanover Square*, Burr. S. C. 12; or if his master consent to his serving a particular person, and he serve him accordingly, although his master is not to receive his earnings. *R. v. Barlestone*, 5 B. & Ald. The service must be under the indentures. *R. v. Ecclesfield*, 6 M. & Sel. 174.

But serving another without the master's consent will give no settlement. *R. v. St. Martin's, Exeter*, 2 A. & E. 655. And it is the same where the apprentice serves another under a general licence from his master to serve whom he chooses, *R. v. Holy Trinity*, 3 T. R. 605, there being no express assent of the master to the particular service; or where he serves another with the knowledge of the master, but without his actual consent. *R. v. Ideford*, Burr. S. C. 821. Where the consent of the first master is subsequent to the service, it will not be considered a service under the indenture. *R. v. Whitchurch*, 1 B. & C. 574.

Service after Death of Master.] Although ordinarily the contract of apprenticeship is determined by the death of the master; *R. v. Eakring*, Burr. S. C. 320; yet if the apprentice chooses to serve the representatives of the master, he may do so, and such service will be effectual under the indentures. *R. v. Stockland*, Cald. 60. In the case of a parish apprentice with whom no premium, or a premium not exceeding 5*l.*, has been paid, the covenant for maintenance is not in force more than three months after the death of the master. 32 Geo. 3, c. 57, s. 1; 5 Vict. c. 7. On the death of the master the justices may (upon application being made within three months afterwards by the widow, husband, son, daughter, brother, sister, executor or administrator) by indorsement on indenture order apprentice to serve remainder of his term with any one of such persons making the application. 32 Geo. 3, c. 57, s. 2.

Discharging Indentures.] The Queen's Bench Division has no authority to discharge an apprentice from his indentures. *Ex parte Gill*, 7 East, 376. But the indentures may be discharged,—1st, by application of either party to two justices, or to the quarter sessions;—2nd, by death or bankruptcy of the master;—3rd, by the apprentice attaining his majority;—4th, by consent.

Discharge by Justices.] The power given to two justices over indentures is created by 20 Geo. 2, c. 19, which, however, extends only to parish apprentices, and to any other apprentice, upon whose

binding no larger premium than [25*l.*, 4 Geo. 4, c. 29, or no premium at all, 5 Vict. sess. 2, c. 7,] was paid. By the 3rd section, in such cases, upon complaint by the apprentice of any misusage, cruelty or ill-treatment by his master, the justices may summon the master, and, upon proof upon oath of the complaint to their satisfaction, may discharge the indentures by warrant or certificate under their hands and seals. Sect. 4 gives power, in case of complaint by the master concerning any miscarriage or ill-behaviour by the apprentice, to punish the latter by commitment to the house of correction, with hard labour, for not more than one calendar month, or by discharging him in manner and form aforesaid. The complaint must be made by the master [or by his steward, manager or agent, 4 Geo. 4, c. 34, s. 1], but it may be verified by the oath of any other person. *Finley v. Jowle*, 12 East, 248. This Act is not repealed by 6 Geo. 3, c. 28, s. 21, which empowers justices to order an apprentice who absents himself from his service to serve his master for so long as he has absconded, this remedy being cumulative. *Gray v. Cookson*, 16 East, 13. An appeal is given, except against any order of commitment, to the next general quarter sessions; but no *certiorari* is allowed. By 32 Geo. 3, c. 57, s. 8, two justices may discharge any parish apprentice with whom a premium not exceeding 5*l.* [or no premium, 5 Vict. sess. 2, c. 7] has been paid, upon the master becoming unable to maintain his apprentice.

Discharge by Death or Bankruptcy.] The effect of death as a discharge has been already noticed. See *ante*, p. 391. By 32 & 33 Vict. c. 71, s. 33, when a petition for adjudication is presented and any person is apprenticed to the bankrupt, the order of adjudication (if either the bankrupt or apprentice has given written notice to the trustee to that effect) is a complete discharge of the indenture of apprenticeship. If any money has been paid by or on behalf of apprentice to the bankrupt, the trustee may make payments to such apprentice. If it appears expedient to the trustee he may, instead of acting as above, transfer the indenture of apprenticeship to some other person.

Discharge by Consent.] An apprentice may be discharged by the indenture being given up or cancelled by the consent of both parties, but if he is an infant, proof must be given that the dissolution of the contract is for his benefit. *R. v. Great Wigston*, 3 B. & C. 484; *R. v. Mountsorrel*, 3 M. & Sel. 497; *R. v. Weddington*, Burr. S. C. 766.

In the case of parish apprentices under age, the parish officers, as well as the other parties, must concur; *R. v. Langham*, Cald. 126; *R. v. Austrey*, Burr. S. C. 441; but the master, and parish apprentice of full age, may cancel the indenture by agreement; *R. v. Harberton*, 1 T. R. 139.

SECTION VI.—DERIVATIVE SETTLEMENTS.

Abolition of Derivative Settlements.] 39 & 40 Vict. c. 61, s. 35, enacts, that no person shall be deemed to have derived a settlement from any other person, whether by parentage, estate, or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another.

An illegitimate child shall retain the settlement of its mother until such child acquire another settlement.

If any child has not acquired a settlement for itself, or being a female has not derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent, without inquiring into the derivative settlement of such parent, such child or female is to be deemed to be settled in the parish in which he or she was born. *Woodstock Union v. St. Pancras*, L. R. 4 Q. B. D. 1; 48 L. J. M. C. 1; 39 L. T. N. S. 256.

The child gains no settlement by the second marriage of its widowed mother. *Keynsham Union v. Bedminster Union*, L. R. 3 Q. B. D. 344; 47 L. J. M. C. 73; 38 L. T. N. S. 507.

An illegitimate child under sixteen does not take the settlement of its mother where such settlement has been derived from her marriage. *Manchester v. St. Pancras*, L. R. 4 Q. B. D. 409; 41 L. T. N. S. 218.

See also *Clifton Union v. Liverpool*, L. R. 2 Q. B. D. 540; 46 L. J. M. C. 209; *Barton Regis Union v. Liverpool*, L. R. 3 Q. B. D. 295; 47 L. J. M. C. 62; 39 L. T. N. S. 445.

Settlement by Marriage.] If a woman marry a man who has a known settlement, she, *instantly* and *ipso facto* by the marriage, acquires her husband's settlement, and continues to take any new settlement he may obtain until his death; *St. Giles, Reading v.*

Eversley, Blackwater, 1 Str. 580 ; 2 Ld. Raym. 1332 ; whether he be a native or a foreigner ; *R. v. Eastbourne*, 4 East, 103. But she cannot gain a new settlement by any act of her own during the marriage, *R. v. Aythrop Rooding*, Burr. S. C. 412, even by residence on her own estate, after her husband has deserted her and his children. *Berkhampstead v. St. Mary, Northchurch*, 2 Bott, 25. After his death she retains his last settlement until she acquires a new one. *St. George's v. St. Catherine's*, 4 Burr. 289.

SECTION VII.—BY BIRTH.

Of legitimate Children.] The place of birth is *prima facie* the place of settlement of legitimate children. *R. v. Heaton Norris*, 6 T. R. 653. But this is so only until another settlement, acquired by the pauper in his own right, is shown to exist, or in default of any such acquired settlement being made out, until the father's or (if he have none) the mother's place of settlement is ascertained ; since the place of birth is that of settlement only until a better be shown. *R. v. St. Mary, Beverley*, 1 B. & Ad. 201 ; *R. v. St. Mary, Leicester*, 3 A. & E. 644 ; *R. v. Newchurch*, 32 L. J. M. C. 19.

Of illegitimate Children.] See *ante*, p. 393. Birth confers a settlement without a residence of forty days. *R. v. Watford*, 9 Q. B. 626.

CHAPTER XV.

REMOVAL OF PAUPERS.

- SECTION I. *Removeability in general.*
 II. *How removed.*
 III. *Removal of Scotch, &c., Paupers.*
 IV. *Orders of Removal.*
 1. *Form and Requisites of Order.*
 2. *Examination of Pauper.*
 3. *Notice of Chargeability and grounds of Removal.*
 4. *Abandoning and Superseding Order.*
 5. *Suspension of Orders.*
 6. *Appeal against Orders.*
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SECTION I.—REMOVEABILITY IN GENERAL.

Statutes authorizing Removal.] The effect of recent statutes by which the area of the parish is for the purposes of chargeability enlarged to that of a union, and of those by which the *status* of irremoveability is conferred by one year's residence in the same union is to reduce the importance of this branch of parish law. The authority of magistrates to remove paupers to the places where they are settled exists only by express provision of the Legislature. This power is founded on the 13 & 14 Car. 2, c. 12.

Casual Poor.] Persons who are detained in a parish by sickness, accident or casualty, and thus become chargeable there, are not removeable, as they do not come there with any intention of settling as inhabitants. Thus, if a labourer passing through a parish to which he does not belong accidentally breaks his leg, and is relieved during his illness in that or in a neighbouring parish, he cannot be removed therefrom, but must be relieved as casual poor. *R. v. St.*

James, Bury St. Edmunds, 10 East, 25 ; *R. v. St. Laurence, Ludlow*, 4 B. & Ald. 660. Where, however, the pauper is resident in the parish at the time when he meets with the accident there, he is removeable, and cannot be treated as casual poor ; *R. v. Oldland*, 4 A. & E. 929 ; and if he chooses to remain there after he gets into such a state that he might quit the parish, he must be taken to have come to settle there, and is removeable. *Reg. v. Cuckfield*, 5 E. & B. 523.

Chargeability.] It is requisite, before a person can be removed from a parish, that he should be at the time actually chargeable thereto. Application for and receipt of relief from the parish constitute actual chargeability, although the pauper has property enough to maintain him, if sold. *R. v. Ampthill*, 2 B. & C. 847 ; *Reg. v. St. Mary, Bungay*, 12 Q. B. 38.

Pregnancy.] An unmarried woman with child cannot be removed unless she become actually chargeable, and pregnancy is not to be taken as presumptive evidence of chargeability. 4 & 5 Will. 4, c. 76, s. 69.

Felons and Vagrants.] By 35 Geo. 3, c. 101, s. 5, persons convicted of felony, or who are by law deemed rogues, vagabonds, or idle or disorderly persons, or who appear to two justices of the division where they reside, upon the oath of one or more credible witnesses, to be persons of evil fame, or reputed thieves, and not able to give a satisfactory account of themselves or their way of living, are to be considered as actually chargeable. And by 5 Geo. 4, c. 83, s. 20, every person convicted under that Act as an idle and disorderly person, or as a rogue and vagabond, is to be deemed actually chargeable to the place in which he resides, and removeable therefrom. See 12 & 13 Vict. c. 103, s. 3.

Sickness.] By the 9 & 10 Vict. c. 66, s. 4, no warrant is to be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the warrant state therein that they are satisfied that it will produce permanent disability. This section applies only to persons actually sick, and not to the case of the husband lying sick in a hospital in another parish, whose wife and children during his absence become chargeable to the parish in which they are residing. *R. v. St. George*, 31 L. J. M. C. 85. Pregnancy is not necessarily "sickness" within this section. *R. v. Huddersfield*, 26 L. J. M. C. 169 ; but incurable blindness is. *R. v. Bucknell*,

23 L. J. M. C. 129. Whether lunacy is seems to be questionable. *R. v. Manchester*, 26 L. J. M. C. 1, and 24 & 25 Vict. c. 55, s. 6. If the justices who make an order state that they are satisfied that the sickness is such as would produce permanent disability, the quarter sessions cannot inquire into the fact whether it will do so or not. *R. v. St. Mary, Whittlesey*, 32 L. J. M. C. 78.

Who are not removeable.] There are certain classes of persons who are by statute rendered irremoveable from the parishes in which they are inhabiting, and to which they have become chargeable. The object of the 13 & 14 Car. 2, c. 12, being to authorize the removal of paupers from parishes in which they had not gained a settlement to those in which they are settled, it follows that no person can be removed from a parish where he is settled.

Wife.] A wife becoming chargeable in the permanent absence of her husband, as where he has deserted her, may be removed to his settlement, or if he does not appear to have any, to her maiden settlement. *R. v. Harberton*, 13 East, 311; *R. v. Cottingham*, 7 B. & C. 615; *Reg. v. Watford*, 9 Q. B. 626. But not if it appears that her husband has a settlement, though the exact place of such settlement cannot be ascertained. *R. v. St. Mary, Beverley*, 1 B. & Ad. 201; *Reg. v. St. Margaret, Westminster*, 7 Q. B. 569.

But a wife, residing with her husband, cannot be removed from him, whether he have a settlement or not, except with the consent of both. *R. v. Carleton*, Burr. S. C. 813; *R. v. Eltham*, 5 East, 113; *Reg. v. Leeds*, 5 Q. B. 916. And this is so even where the husband is confined in gaol in the same parish as that in which his wife resides. *Reg. v. Stogumber*, 9 A. & E. 622.

By the 9 & 10 Vict. c. 66, s. 1 (amended by the 11 & 12 Vict. c. 111), whenever any person has a wife or children having no other settlement than his own, such wife and children are to be removeable whenever he would be removeable, and not removeable when he would not be removeable. This relates only to the irremoveability arising from one year's residence under that statute (see *post*, p. 398); *Reg. v. East Stonehouse*, 3 E. & B. 596; *Much Hoole v. Preston*, 17 Q. B. 548; *R. v. Culham*, 28 L. J. M. C. 105; *R. v. Elvel*, 29 L. J. M. C. 17; *R. v. St. Olave's*, L. R. 9 Q. B. 38.

Where a wife is deserted by her husband, and after his desertion resides for one year [29 & 30 Vict. c. 113, s. 17] in such a manner as would, if she were a widow, render her irremoveable, she is not

liable to be removed from the parish wherein she is resident, unless her husband return to cohabit with her. 24 & 25 Vict. c. 55, s. 3. As to what amounts to desertion, see *R. v. St. Mary, Islington*, L.R. 5 Q. B. 445; and as to desertion of adulterous wife, *R. v. Maidstone*, L. R. 5 Q. B. D. 31.

Children.] Children under the age of nurture, *i.e.* seven years, cannot be removed from their mother, even though they have not the same settlement as she has; *Wangford v. Brandon*, Carth. 449; *Anon.*, 2 Salk. 482; *R. v. Sarmundham*, 2 Bott, 18; but the parish where they are resident must relieve them, and may procure an order upon the parish where the settlement of the children is to reimburse themselves. *R. v. Hemlington*, Cald. 6; *Shermanbury v. Bolney*, Carth. 279; see *R. v. JJ. Middlesex*, 4 B. & Ald. 298. Neither can the mother of a child under seven years of age consent to the child being removed without her; since the object of the rule against separation is that the child should, during that tender age, have the benefit of its mother's nurture. *Reg. v. Birmingham*, 5 Q. B. 210.

By sect. 3 of 9 & 10 Vict. c. 66, no child under the age of sixteen, whether legitimate or illegitimate, residing in any parish with its father or mother, stepfather or stepmother, or reputed father, is to be removed from such parish, in any case where such father, &c., may not be lawfully removed from such parish. *Reg. v. Combs*, 25 L. J. M. C. 59.

Where a child under sixteen residing with its surviving parent is left an orphan, and such parent at the time of death has acquired an exemption from removal by reason of a continuous residence, such orphan is, if not otherwise irremoveable, exempt from removal in like manner, and to the same extent as if it had acquired for itself an exemption from removal by residence. 24 & 25 Vict. c. 55, s. 2.

Widows.] By the 9 & 10 Vict. c. 66, s. 2, no woman residing in any parish with her husband at the time of his death is to be removed from such parish for twelve calendar months next after his death, if she so long continue a widow. *R. v. East Stonehouse*, 24 L. J. M. C. 121; *R. v. St. Marylebone*, 20 L. J. M. C. 174.

Irremoveability by one year's residence.] By 9 & 10 Vict. c. 66, s. 1, and 28 & 29 Vict. c. 79, s. 8, no person is to be removed, nor is any warrant to be granted for the removal of any person, from any parish [or union. 24 & 25 Vict. c. 55, s. 1] in which he has

resided for one year next before the application for the warrant; but it is expressly provided by sect. 5 of 9 & 10 Vict. c. 66, that no person exempted from liability is thereby to acquire any settlement in such parish.

Residence must be continuous.] There must have been a residence in the parish from which the party is sought to be removed for one year continuously, up to the time of the application for the warrant, in order to give the *status* of irremoveability. *Reg. v. Harrow-on-the-Hill*, 12 Q. B. 103. And the period may be made up of residence partly as widow and partly as wife. *Reg. v. Glossop*, 12 Q. B. 117.

A voluntary absence with an intention to return is no break. *Reg. v. Tacolnestone*, 12 Q. B. 157; *R. v. Brighthelmston*, 24 L. J. M. C. 41; but an absence ever so short, without such intention, is a break. *Newark v. Glandford Brigg*, L. R. 2 Q. B. D. 522. Sleeping out by a homeless pauper in a refuge for houseless poor is no break. *R. v. St. Leonard's, Shoreditch*, L. R. 1 Q. B. 21. A conditional intention to return to the house of the pauper's mother is not a sufficient intention to return. *R. v. Glossop Union*. See, further, as to "intention to return," *R. v. Abingdon*, L. R. 5 Q. B. 406; *R. v. Norwood*, L. R. 2 Q. B. 457; *Wellington v. Whitchurch*, 32 L. J. M. C. 189, and *R. v. Stapleton*, 22 L. J. M. C. 102.

Period, how computed.] The one year's residence must be next before the application for the warrant. But the time during which such person is a prisoner in a prison, or is serving her Majesty as a soldier, marine or sailor, or resides as an in-pensioner in Greenwich or Chelsea hospitals, or is confined in a lunatic asylum, or house licensed or hospital registered for the reception of lunatics, or is a patient in a hospital, or during which he receives relief from any parish, or is wholly or in part maintained by any rate or subscription raised in a parish in which he does not reside, not being a *bonâ fide* charitable gift, is for all purposes to be excluded from the computation of the time before mentioned. 9 & 10 Vict. c. 66, s. 1. Where a person becomes chargeable in any parish comprised in a union not being the parish of his settlement, the period of time during which he has resided in the parish of the settlement, if in the same union, is not to be excluded in the computation of the time of residence required to render him exempt from removal. 27 & 28 Vict. c. 105.

A wife's absence with her husband on service is not excepted. *Easton v. Marlborough*, L. R. 2 Q. B. 128. Relief to a child above the age of sixteen, although unemancipated and residing with the parent, does not affect the parent's *status* of irremovability by residence. *R. v. St. Mary, Islington*, 31 L. J. M. C. 233. Where a woman has been removed to a lunatic asylum at the instance of her husband, and is maintained there at the cost of the parish, such maintenance is parish relief to the husband. *R. v. St. George, Bloomsbury*, 32 L. J. M. C. 217.

SECTION II.—HOW REMOVED.

To what Place the Removal may be.] The removal can only be to a parish or place where the pauper is last legally settled, and which maintains its own poor. *R. v. Swalcliffe*, Cald. 248.

By whom to be removed.] The churchwardens, overseers, &c., may remove the pauper, or may employ any proper persons to remove and deliver him. 54 Geo. 3, c. 170, s. 10.

Guardians of unions may obtain orders of removal in respect of paupers settled elsewhere. 28 & 29 Vict. c. 79, s. 2.

If the guardians are satisfied that any pauper is settled within and removeable to their union, they may consent under their common seal to receive such pauper without any order of removal. Sect. 6.

Guardians can call for parish books and papers from the overseers. Sect. 5.

At what Time Removal may be.] By the 4 & 5 Will. 4, c. 76, s. 79 (amended by 11 & 12 Vict. c. 31), no pauper can be removed under an order of removal until twenty-one days after a notice of chargeability, and a copy or counterpart of the order of removal, and a statement of the grounds of removal have been sent to the overseers of the parish to which the order is directed, unless such overseers, by writing under their hands, agree to submit to the order before the expiration of that period.

As to removals under suspended orders, see *post*, p. 407.

Delivery of the Pauper.] By 9 & 10 Vict. c. 66, s. 7, the delivery of a pauper, under a warrant of removal directed to the

overseers of a parish, at the workhouse of such parish, or of any union to which such parish belongs, to any officer of such workhouse, is to be deemed a delivery to the overseers.

Refusal to receive the Pauper.] The 13 & 14 Car. 2, c. 12, s. 3, makes it an indictable offence if churchwardens and overseers refuse to receive and provide for persons removed to their parishes. And by the 3 Will. & M. c. 11, s. 10, the churchwardens or overseers of the parish to which a pauper is ordered to be removed are required to receive him under a penalty of 5*l.* for each refusal, to be levied by distress and sale, with a power of imprisonment for forty days, if no sufficient distress. This does not supersede the power of indicting under the former statute. *Ex parte Downton*, 27 L. J. M. C. 281.

Unlawfully procuring Removal.] See *ante*, p. 331.

Returning after Removal.] Every person returning and becoming chargeable to a parish, &c., from which he has been lawfully removed, unless he produces a certificate acknowledging him to be settled in some other parish, is to be deemed an idle and disorderly person, and may be punished accordingly. 5 Geo. 4, c. 83, s. 3. But such a commitment can, it seems, only be made when the pauper returns in a state of vagrancy. *R. v. Fillongley*, 2 T. R. 709; *Mann v. Davers*, 3 B. & Ald. 103.

Any pauper removed under an order obtained by guardians of a union returning to and becoming chargeable to such union again within a year is to be deemed an idle and disorderly person, &c. 28 & 29 Vict. c. 79, s. 7.

SECTION III.—REMOVAL OF SCOTCH, &C., PAUPERS.

How removed.] If any person born in Scotland or Ireland, or the Isle of Man, Scilly, Jersey or Guernsey, and not settled in England, becomes chargeable to any parish in England, by reason of relief given to him or herself, or to his wife, or any legitimate or bastard child, such person, his wife and any child so chargeable, are liable to be removed respectively to Scotland, Ireland, &c. 8 & 9 Vict. c. 117, s. 2.

Persons born in England, Ireland, or the Isle of Man, and not settled in Scotland, who become chargeable to any parish in Scotland by reason of relief, are removable to England, &c.

Guardians, &c., may take persons removeable before two justices without a summons, and have the powers of constables. 10 & 11 Vict. c. 33.

The warrant of removal is to be signed in petty sessions by two justices, or by a police magistrate, and is to contain the name and age of person to be removed, and other particulars. 24 & 25 Vict. c. 76, s. 2.

Copy of the warrant is to be sent to the place to which removal is to be made. Sect. 3. Women and children are not to be removed as deck passengers in the winter. Sect. 6.

Persons executing such warrants of removal are to detain the paupers mentioned therein in custody until they arrive at the place to which they are ordered to be removed, and are for that purpose to have, in every county and place through which they pass, the powers of a constable, although they may not otherwise be empowered to act as a constable for such county or place. 8 & 9 Vict. c. 117, s. 3.

This section is extended to Ireland by 26 & 27 Vict. c. 89, s. 2.

Relieving officers, &c., are to receive persons named in warrant under penalty of 10*l*. 25 & 26 Vict. c. 113, s. 5.

Parochial boards and guardians may forward the pauper to his destination and recover the costs. Sect. 6.

The forms of warrant for removal from England to Ireland are in the schedule to 26 & 27 Vict. c. 89.

As to appeal, see sect. 7.

To what Persons the Statute extends.] Unless the father is in a situation to be removed, and the children are at the time part of his family, the Act does not apply to the children. *R. v. All Saints, Derby*, 19 L. J. M. C. 14.

Unemancipated children born in England of Irish parents, who have no settlement in England, the mother being dead and the father having deserted them, may be removed to their birth settlement, and cannot, in the absence of their father, be sent to Ireland under the Act. *Id.*; *Irish Commissioners v. Liverpool*, L. R. 5 Q. B. 79. An English-born emancipated child of Irish parents who have no settlement has a birth settlement, and is not removeable with his parents to Ireland. *R. v. Preston*, 10 L. J. M. C. 23.

SECTION IV.—ORDERS OF REMOVAL.

1. *Form and Requisites of the Order.*

By whom made.] An order for the removal of a pauper must be made by two justices acting in and for the county in which the parish to which the pauper is chargeable is situated. 13 & 14 Car. 2, c. 12, s. 1; *R. v. Dobbyn*, 2 Salk. 474.

The justices who make the order must not be interested parties. *R. v. Great Chart*, Burr. S. C. 194. But the 16 Geo. 2, c. 18, renders justices who are rated inhabitants of any parish affected by the order competent to act. The justices must not be the complaining churchwardens. *R. v. Great Yarmouth*, 6 B. & C. 646.

The Complaint, how made.] The order may be made on complaint of churchwardens or overseers; 13 & 14 Car. 2, c. 12, s. 1; or officer of guardians. 5 & 6 Vict. c. 57, s. 17.

The practice is to make complaint before one justice, and he grants his warrant to bring the pauper before two justices.

The complaint need not be upon oath; *R. v. Westwood*, 1 Str. 73; *R. v. Standish-cum-Langtree*, Burr. S. C. 150; nor in writing. *Reg. v. Bedingham*, 5 Q. B. 653.

What should be stated in the Complaint.] The complaint, as set out in the order of removal, should state that the pauper has come to inhabit in the complaining parish, and is at that time actually chargeable thereto, and that he is settled elsewhere. *R. v. Angell*, Ca. temp. Hardw. 124; *R. v. Ufculm*, Burr. S. C. 138; *R. v. JJ. Buckinghamshire*, 3 Q. B. 800; *R. v. Rotherham*, *Ibid.* 776.

Description of the Paupers.] The names of all the persons to be removed should be inserted in the order, or if they are unknown, it should be so stated. *Southell v. Needwell*, Set. & Rem. 35. An order to remove a "man and his family," or, "and his children," is bad. *Johnson's Case*, 2 Salk. 485; *Beaston v. Scisson*, 1 Stra. 114.

The Adjudication.] The order should adjudge the truth of the complaint and the place of the pauper's last legal settlement with certainty, and positively. The form "we do adjudge" is the most proper; *R. v. Maulden*, 8 B. & C. 78.

Actual chargeability must be adjudged, either expressly or by

reference to the complaint. *R. v. Minchinhampton*, 2 Sess. Ca. 92; *R. v. Netherton*, Burr. S. C. 139; *R. v. Bourne*, *Ibid.* 39. The order need not negative that the chargeability was occasioned by relief made necessary by sickness or accident (see 9 & 10 Vict. c. 66, s. 4, *ante*, p. 396); *Reg. v. Halifax*, 12 Q. B. 111; but if the fact be so, the order will be bad on appeal, unless the justices find in the order that such sickness, &c. will produce permanent disability; see *Reg. v. Priors Hardwick*, 12 Q. B. 168; nor need the order find that the pauper has not resided in the removing parish for one year next before the application for the warrant. *Reg. v. St. George, Hanover Square*, 13 Q. B. 642.

The justices are not required to state the grounds upon which they arrive at their conclusion. *R. v. Honiton*, Burr. S. C. 680; *R. v. Tibbenham*, 9 East, 388; though, if they are set out, the Court will inquire into their sufficiency. *R. v. Coln, St. Aldwicks*, Burr. S. C. 136.

Direction of the Order.] The order should be directed to the churchwardens and overseers or guardians of both parishes, or unions, and should require those of the complaining parish to remove the pauper, and those of the parish in which the settlement is adjudged to be to receive and provide for him. *R. v. St. Olave's*, 3 Salk. 256.

Signature, &c. of the Order.] The order must be under the hands and seals of the justices making it. See *Reg. v. Great Bolton*, 7 Q. B. 387.

Form of the Order.] The order may direct the removal to be made absolutely or "on sight hereof." *Reg. v. Rotherham*, 3 Q. B. 776. The 11 & 12 Vict. c. 31, s. 6, *post*, authorises the amendment of any omissions or mistakes in the drawing up of the order, if sufficient grounds were in proof before the magistrates making it to have authorised the drawing up thereof free from such omissions or mistakes.

2. Examination of the Pauper.

How taken.] Before justices make an order of removal, they ought to take the examination of such witnesses as can depose to the facts requisite to be proved as the foundation of the order: viz., the inhabitancy, chargeability and settlement of the pauper. By the 11 & 12 Vict. c. 31, s. 3, the clerk to the magistrates who made

the order is to keep the depositions upon which such order was made, and within seven days to furnish a copy of them to the overseers or guardians of the parish to which the removal is directed to be made, if they apply for such copy. It is, therefore, necessary that the examination should be taken in writing. And it should be upon oath. *Munger Hunger v. Warden*, 2 Sess. Ca. 40.

By whom taken.] The examination ought to be taken by two justices ; see *Reg. v. Silkstone*, 2 Q. B. 520 ; and they should be the same justices who make the order ; *R. v. Wykes*, 2 Str. 1092 ; both of whom should be present at the same time. *R. v. Coln, St. Aldwins*, Burr. S. C. 136. By the 49 Geo. 3, c. 124, s. 4, whenever any pauper is, by age, illness or infirmity, unable to be brought up to the petty sessions to be examined as to his settlement, any one magistrate acting for the district where such pauper is may take his examination and report the same to any other magistrates acting for the same district, and they may, upon such report, adjudge the settlement of the pauper. In such a case the special circumstances under which the examination was taken need not be stated. *R. v. South Lynn, All Saints*, 4 M. & Sel. 354.

What Evidence should be taken.] The usual course is to examine the pauper himself as to his settlement ; and, as said by Holt, C.J. (Comb. 478), “ if it can be, it is fit it should be so, but not absolutely necessary.” See *R. v. Bagworth*, Cald. 179 ; *R. v. Everdon*, 9 East, 101. By the 11 & 12 Vict. c. 31, s. 3, on the trial of any appeal against an order of removal, no order is to be quashed or set aside, either wholly or in part, on the ground that the depositions taken do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to, the order or grounds of removal. This, however, still leaves it incumbent on the justices not to make the order except upon legal and sufficient evidence laid before them.

3. *Notice of Chargeability and Grounds of Removal.*

Notice of Chargeability, &c., to be served before Removal.] No person is to be removed until twenty-one days after a notice in writing of his being chargeable has been sent to the parish to which order of removal is directed. Provided, that if guardians agree to submit to such order he may be removed, although the said period of twenty-one days has not elapsed. If notice of appeal against such

order is received by the parish from which such poor person is directed to be removed, within twenty-one days, it is not to be lawful to remove him until after the time for prosecuting such appeal has expired. 4 & 5 Will. 4, c. 76, s. 79.

Service, when and how made.] The order, notice of chargeability, and grounds of removal should be served within a reasonable time after the order is made. See *R. v. Lampeter*, 3 B. & C. 454. And by the 4 & 5 Will. 3, c. 76, s. 84, costs of maintenance can only be recovered from the time of the service of notice of chargeability. Until the notice of chargeability is sent there is no grievance against which an appeal will lie, and the sessions have no jurisdiction in such a case to entertain an appeal. *Reg. v. Recorder of Shrewsbury*, 1 E. & B. 711.

Notice of Chargeability.] The notice of chargeability should state in the body of it, and not merely by reference, the names of the paupers to be removed. *Reg. v. Gomersal*, 12 Q. B. 76. But where a woman and her illegitimate child, five years old, were ordered to be removed, a notice of chargeability naming only the mother was held sufficient. *Reg. v. Stockton-on-Tees*, 7 Q. B. 520.

Grounds of Removal.] The statement of grounds of removal is substituted for the examinations which were formerly served with the notice of chargeability. They are required to include the particulars of the settlement relied upon by the removing parish, and should, therefore, disclose the precise kind of settlement or evidence of settlement (as relief, prior order, &c.) intended to be set up, with such particularity, in respect of names, dates, &c., as will enable the other parish to inquire into the facts. It is, however, sufficient, in alleging a settlement by parentage, to state that the pauper was "unemancipated," without negating the different modes in which emancipation might take place. *Reg. v. Rothwell*, 7 Q. B. 574, n.

By the 11 & 12 Vict. c. 31, s. 2, on the hearing of an appeal against an order of removal, it is not lawful for the respondents to give evidence of any other grounds of removal than those set forth in such statement.

4. *Abandoning and Superseding the Order.*

When Orders may be abandoned.] See 11 & 12 Vict. c. 31, s. 8.

5. *Suspension of Orders.*

Power to suspend.] By the 35 Geo. 3, c. 101, s. 2, where a pauper is brought before justices for the purpose of being removed by virtue of an order of removal, and it appears that he is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justices are required to suspend the execution of the order until they are satisfied that it may be safely executed, without danger to any person who is the subject thereof; which suspension of, and subsequent permission to execute the same, are to be respectively indorsed on the order of removal, and signed by such justices. This power of suspending the order applies although the pauper was not brought personally before the justices. *R. v. Everdon*, 9 East, 101.

By the 49 Geo. 3, c. 124, s. 3, where any order of removal is suspended, its execution is also to be suspended for the same period, with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person, at the time of such order of removal made.

Service of suspended Order.] The justices have only jurisdiction to make the order of suspension at the time of making the order of removal, not afterwards. *R. v. Llanellchid*, 29 L. J. M. C. 102.

By the 4 & 5 Will. 4, c. 76, s. 84, no charges under a suspended order of removal can be recovered unless notice of such order, with a copy of the same [and a notice of chargeability and statement of grounds of removal, 11 & 12 Vict. c. 31, ss. 2, 10], have been served on the overseers within ten days of such order being made. See *Reg. v. Wodehouse*, 15 Q. B. 1037.

The death of the pauper during the suspension of the order does not render it a nullity; *R. v. Lampeter*, 3 B. & C. 454; but it gives the parish obtaining the order a right to the costs of maintenance. 35 Geo. 3, c. 101, s. 2, *infra*.

No Settlement during Suspension.] No act done by any poor person continuing to reside in any parish, &c., under the suspension of an order is to be effectual, either in whole or in part, for the purpose of giving him a settlement in the same. 35 Geo. 3, c. 101, s. 2. Therefore, the occupation of a tenement during such period cannot be included in the time requisite to confer a settlement. *R. v. St. John, Hackney*, 2 A. & E. 548.

The subsequent Removal.] By the 35 Geo. 3, c. 101, s. 2, sub-

sequent permission to execute the order is to be endorsed on the order, and signed [by any two justices of the county or other jurisdiction, 49 Geo. 3, c. 124, s. 1]. The absence of such a permission does not vitiate the order, if a removal actually takes place under it. *R. v. Englefield*, 13 East, 317. But the order permitting the removal must purport to be made within the jurisdiction of the justices. *Reg. v. Croncan*, 14 Q. B. 221.

Costs during Suspension.] Charges incurred by suspension to be paid by officers of parish to which they are ordered to be removed, which may be levied with costs. 35 Geo. 3, c. 101, s. 2; 4 & 5 Will. 4, c. 76, s. 84, takes away the right to such costs in case the order, &c., is not served within ten days.

By the 14 & 15 Vict. c. 105, s. 8, where the execution of an order of removal has been suspended, the overseers of the parish to which the removal is thereby ordered to be made may from time to time, during the continuance of the suspension, if they think fit, pay to the overseers of the parish obtaining such order the costs and expenses incurred in the maintenance and relief of the pauper mentioned in such order, either directly or through the guardians of the union comprising either or both of such parishes, and are to have credit for every such payment in the charges allowed by any order of justices subsequently made.

6. *Appeal against Orders.*

By 13 & 14 Car. 2, c. 12, s. 1, all persons who think themselves aggrieved by the justices having made an order of removal may appeal to quarter sessions.

By 3 Will. & M., c. 11, s. 9, a like appeal is given against the settlements established by that Act.

Not only the parish officers of the parish to which the pauper is removed, but the pauper himself, may appeal against it. *R. v. Hartfield*, Carthew. 222.

Guardians of a union upon whom an order has been made under 28 & 29 Vict. c. 79, and guardians of other unions, may also appeal. 30 & 31 Vict. c. 106, s. 24.

[For the statutes and cases relating to appeals against orders of removal, see 4th edition of Chitty's Statutes, by Lely, vol. v. pp. 288—345.]

CHAPTER XVI.

LIGHTING AND WATCHING PARISHES.

THE 3 & 4 Will. 4, c. 90, may be adopted in all parishes in England and Wales, but in districts where the Public Health Act is in force the Act is superseded. 21 & 22 Vict. c. 98, s. 46; 38 & 39 Vict. c. 55, s. 163. The Act is also repealed as to the metropolis by 28 & 29 Vict. c. 90, s. 35.

The Public Health Act, 1875, gives no power to rural sanitary authorities, as such, to provide their district with lighting. They can only acquire such powers by the action of the Local Government Board, who may, under sect. 163 or sect. 276, grant them urban powers with respect to lighting. If a rural sanitary authority has adopted 3 & 4 Will. 4, c. 90, and afterwards becomes urban, then that Act becomes superseded by sect. 163 of the Public Health Act.

Adoption of the Act.] Upon the application in writing of three or more of the ratepayers of any parish, the churchwardens thereof are required, within ten days after the receipt of such application, to appoint and notify a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions of the Act shall be adopted and carried into execution in the said parish. Sect. 5.

The powers given to a churchwarden are to be understood as given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business. Sect. 77. See *Reg. v. Kingwinford*, 3 E. & B. 688.

Proceedings at the Meeting.] See ss. 6—14.

No Person to Vote unless Rated.] No person is to be entitled to vote, or do any other act, matter or thing, as such, under the provisions of this Act, unless he has been rated to the relief of the poor for the whole year immediately preceding his so voting or

otherwise acting as such ratepayer, and has paid all the parochial rates, except such as have been made or become due within the six months immediately preceding such voting. Sect. 14.

Notice of Adoption of the Act.] Notice of the adoption of the Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected, is to be forthwith given by the churchwardens for the time being of the said parish, by affixing a notice of the same to the principal door of every church and chapel within the parish, or on the usual place of affixing notices relating to the parochial affairs of such parish; and in such case the provisions of the Act are from thenceforth to take effect and come into operation in such parish. Sect. 15.

Election of Inspectors.] The inspectors herein mentioned are to be elected in manner following:—The churchwardens of any parish adopting the provisions of this Act are, in the manner herein first directed, forthwith to call a meeting of the ratepayers of such parish, and each candidate (being a person who resides within such parish, and has been assessed or charged by the last rate made for relief of the poor, in respect of a dwelling-house, or other tenement or premises of the annual value, according to the said rate, of fifteen pounds or more) is to be eligible to be elected an inspector for the purposes of the Act, and is to be proposed at the meeting by some person duly qualified to vote thereat, and seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorised to be elected are proposed, and a poll is demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman is to open and proceed with such poll, and in a book or books prepared for that purpose (which the churchwardens are required to cause to be prepared), to enter or cause to be entered the names of all such candidates, and the name of every person duly qualified to be present and vote, who desires to vote, together with his description and abode, and is to register the vote of every such person for every or any such candidate as every such person may respectively require. Sect. 17. The poll may be adjourned. *Id.*

Meetings to Inspect Accounts.] The inspectors are, within one month next after the expiration of twelve calendar months from the day of the adoption, to give notice to the churchwardens of the parish that they are ready to produce their accounts and vouchers

for the previous year, and thereupon the churchwardens are to give due notice, in the manner required with respect to the first meeting to be held under the Act, that a meeting of the ratepayers of the parish will be held at an hour and place in the notice to be mentioned, on some day (not being a Sunday) within ten days from the receipt of such notice, for the purpose of the inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of the Act, and for determining the amount of the money to be raised for the purposes of the Act for the current year ; and in every future year such meeting is, for the purposes aforesaid, to be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following. Sect. 18.

Proceedings at Annual Meetings.] See sects. 19, 20.

Vacancies among Inspectors.] See sect. 21.

Meetings of Inspectors.] The inspectors are to meet on the first Monday in every month, at noon, at some convenient place or office previously publicly notified ; and at such monthly meeting any inhabitant rated to the relief of the poor of any such parish may appear, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of the Act. Sect. 22.

As to special meetings, see sect. 23.

Appointment of Officers, their Duties, &c.] The inspectors are to appoint, during pleasure, a treasurer and other officers, with suitable salaries, and may remove them ; they may also hire an office for the transaction of business, and pay such salaries and rent out of the moneys received under the authority of the Act. Sect. 24.

Rates, how levied.] As soon as the inspectors have been elected, they, or any two or more of them, may, from time to time, issue an order under their hands to the overseers of the poor of any parish to which the provisions of the Act are extended, requiring them to levy the amount mentioned in the said order. Sect. 32. The overseers are, for the purpose of collecting, raising, and levying the rate necessary for the purposes of the Act, to proceed in the same manner, and have the same powers, remedies and privileges, as for levying money for the relief of the poor. Sect. 33. A rate under this Act must be published in the same manner as a poor rate. See *ante*, p. 270, *Reg. v. Whipp*, 4 Q. B. 141.

Amount of Rate, and how assessed.] Owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in such parish are to be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land are rated at and pay for the purposes of the Act. (As to what is included in the term "building," see *Brown v. Lord Granville*, 10 Bing. 69.) But the total amount of the sum to be collected, raised and levied for the purposes of the Act within any one year is not to exceed such sum as has been agreed on by the inhabitants of the parish as aforesaid; and the said sum is to be assessed upon the full and fair annual value to which lands, houses, buildings and other property within the parish are rated or rateable, according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish. Sect. 33.

The overseers are required, whenever, according to the rate made for the relief of the poor, one and the same person is rated in one sum in respect of land, and also of houses, buildings and other property, to cause such land, and also such houses, buildings and other property, to be separately assessed, and the sum hereby authorised to be levied is to be assessed accordingly. Provided that every court-yard, yard or garden (such garden not being a market garden or nursery ground), is to be included in and make part of the assessment to be made on the house, buildings or other property to which they are respectively attached; and that such land, houses, buildings and other property is not in the whole to be assessed at a higher amount than they were in the last rate made for the relief of the poor within the parish. Sect. 34. See *R. v. Midland Railway Co.*, L. R. 10 Q. B. 389; 44 L. J. M. C. 137, where it was held that a line of railway was "land," &c., and therefore rateable at the lower rate.

Collection and Payment of Rates.] See ss. 35—38. As to the discontinuance of such watchmen in places where a county or borough constabulary has been appointed, see *ante*, p. 197.

Fire Engines, Lamps, Gas, &c.] Fire engines are to be provided, and lamp irons put up by the inspectors, sects. 44, 45; but gas pipes are not to be laid on private premises without the consent of the owner or occupier, and such owner may alter the position of the pipes after they have been laid. Sects. 46, 47.

Gas.] In the event of the escape of gas, the person supplying it are to stop the same, within twenty-four hours after notice by

parol, or in writing, under a penalty of 5*l.* for each day after the expiration of the notice. The penalty is recoverable before two justices by distress and sale. Sect. 48. The persons supplying gas are empowered to convey away the washing of the works, but they are forbidden to convey them into any river, running stream, canal, pond, well, &c., or into any ditch communicating with them, under a penalty of 200*l.*, to be sued for within six months, the whole of which goes to the informer. They are further liable to a penalty of 20*l.* for every day such washings are so conveyed after notice in writing. Such penalty to be levied in like manner as other penalties under the Act, and to be paid to the informer, or to the person injured, as the convicting justice shall adjudge. Sects. 49, 50. Gas pipes are to be laid four feet from the water pipes, except where they cross, in which case particular directions are given; the jointing of the pipes is to be done in the trench, and they are to be kept air tight, under a penalty of 5*l.* Sect. 51.

Contamination of Water.] Wherever the water of any water company is contaminated by gas, the persons supplying the gas are liable to a penalty of 20*l.*, to be sued for and applied to the use of the water company; and if they do not, within twenty-four hours after notice in writing, cause effectual measures to be taken to stop the escape of gas and prevent such contamination, they are to pay to the treasurer of the water company a further sum of 10*l.* for each day during which the water continues affected; such penalty to be recovered before two justices, and levied by distress and sale. Sect. 52. In order to determine whether such contamination has taken place, the water company may examine the gas pipes, the expense whereof is to be borne by the persons supplying the gas, if the pipes are found deficient, but if otherwise, it is to be borne by the water company; such expense to be determined by two justices, and recovered in like manner as penalties under the Act. Sect. 53. These provisions are not to prevent the persons supplying the gas being indicted for a nuisance. Sect. 54.

Offences, &c.] Persons *wilfully* damaging watch-houses or lamps, &c., or extinguishing the latter, may be apprehended by any one, and are to forfeit a sum not exceeding 40*s.* for every lamp, &c., so damaged, and not exceeding 5*l.* for any other such offence, together with full satisfaction for the damage. Half the forfeiture is to go to the person apprehending, and half to be applied for the purposes of the Act; and it is to be levied in the same manner as a forfeiture

in the case of an assault on a watchman in the execution of his duty. Sect. 55. If any person *accidentally* breaks a lamp, or does any damage, and refuses to make satisfaction, one justice may award a reasonable sum of money to be paid to the inspectors, which, with the expenses, may be levied as above. Sect. 56.

Powers of Inspectors.] Sections 57—60 relate to the powers of the inspectors; they are authorised to contract for works directed to be done by the Act, and to sue for breach of contract, or to compound with the contractor, and to purchase or rent ground or buildings, for the purposes of the Act. The property in all watch-houses, lamps, materials, &c. is vested in them.

Inspectors of adjoining parishes, having adopted the provisions of the Act, may unite for the better carrying it into effect. Sect. 61.

Form of Information and Conviction.] Section 62 gives forms of information and conviction, but the forms prescribed by the 11 & 12 Vict. c. 43 are applicable to proceedings under this Act.

Appeal against Orders of Inspectors.] Any persons aggrieved by any order of the inspectors, or by any order or conviction of justices, may appeal to the quarter sessions for the county, &c., in which the parish is situate, holden within four months after the cause of complaint shall have arisen, or if such sessions be held within one month, then to the secondly succeeding sessions. The appellant must give fourteen days' notice in writing of his intention to appeal, and of the matter or cause thereof, to the inspectors or other respondents, and, within five days after such notice, he must enter into a recognisance to try such appeal, and to abide the order and pay the costs awarded. Sect. 66.

Appeal against Rate.] Appeals against rates made by the overseers for the purposes of this Act are to be subject to the same rules, and prosecuted in like manner, as appeals against rates for the relief of the poor. Sect. 67.

Procedure.] No plaintiff is to recover in any action for any proceeding in execution of the Act if tender of sufficient amends be made, and no action is to be brought until twenty-one days' notice in writing has been given to the inspectors, or more than six months after the fact committed. No proceedings are to be removed by *certiorari*. Sects. 68—70.

Partial Adoption of Act.] Parishes may adopt the Act, either as to lighting or as to watching, or as to lighting and watching. Sect. 71,

Adoption by part of a Parish.] See Sect. 73.

Extent of Act.] This Act is not to affect the rights of the Commissioners of Sewers, or of the Universities, or to interfere with the powers of any corporate body with respect to watching and lighting. (Sects. 72, 73, 75, 76.) The powers given by the Act to watch and light any parish are to be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct and chapelry, or parts within the same. Sect. 77.

Metropolitan Parishes.] The Metropolis Management Act (18 & 19 Vict. c. 120) gives extensive powers to vestries appointed under it and to the Metropolitan Board of Works. See *ante*, p. 183. These powers are much enlarged by 25 & 26 Vict. c. 102; 34 & 35 Vict. c. 47; 38 & 39 Vict. c. 65; and 41 & 42 Vict. c. 32. See *ante*, p. 192.

CHAPTER XVII.

ELEMENTARY EDUCATION.

IN 1870 an Act (33 & 34 Vict. c. 75) was passed to provide for public elementary education in England and Wales.

That Act has been amended by 36 & 37 Vict. c. 86; 39 & 40 Vict. c. 79, and 43 & 44 Vict. c. 23.

School Districts.] The whole of England and Wales, for the purposes of the Education Acts, is divided into "school districts." The districts are the metropolis, every borough under the Municipal Corporations Act, 1835, and every parish not included in the metropolis or a municipal borough. 33 & 34 Vict. c. 75, s. 4.

When a parish is partly within and partly without a municipal borough the part outside the borough is to be deemed a parish by itself, and, therefore, a separate school district. Sect. 77; 39 & 40 Vict. c. 79, s. 49.

Where a part of a parish is detached from the principal part of the parish, and the Education Department with the consent of the Local Government Board have so directed, each part of the parish is in like manner, for the purposes of the Education Acts, to be a separate parish. 36 & 37 Vict. c. 86, s. 12; 39 & 40 Vict. c. 79, s. 49.

United Districts.] The Education Department may, by order, unite any two or more adjoining school districts not included in the metropolis. 33 & 34 Vict. c. 75, s. 40. When a united school district is formed it is to be deemed a school district.

Contributory Districts.] The Education Department may direct that a proportion of the expenses of providing and maintaining public elementary schools are to be contributed by a school district other than that in which the schools are provided. Sect. 49.

Supply of Schools.] School districts being constituted, it devolves on the Education Department to take steps to insure the provision

of a sufficient amount of accommodation in public elementary schools available for all the children resident in each district, for whose elementary education efficient and suitable provision is not otherwise made. Sect. 5.

“Elementary school” means a school at which elementary education is the principal part of the education there given. It does not include any school at which the ordinary payments in respect of instruction from each scholar exceed 9*d.* a week. Sect. 3.

School Board.] The Education Department may, after certain preliminary inquiries and notices, cause a School Board to be formed for the district. Sects. 9—13.

In a borough the School Board is to be elected by the persons whose names are on the burgess roll. In a parish not included in the metropolis or in a municipal borough, the members of the Board are to be elected by the ratepayers. Sect. 29. When a parish is partly within and partly without a borough the ratepayers of the part outside the borough may meet for the purpose of electing members of the School Board in the same manner as if they were inhabitants of a separate parish. The Corrupt Practices Municipal Act, 1872 (35 & 36 Vict. c. 60), does not apply to a school board election. *Re West Bromwich School Board*, 49 L. J. C. P. D. 641.

Duties of School Boards.] The School Board, on their formation, are to take the necessary steps for providing the school accommodation specified by the Education Department. Sect. 10.

The School Board may provide school houses for the district by building or otherwise. They may improve, enlarge, and fit up any school house provided by them, and supply school apparatus and everything necessary for the efficiency of the schools. Sect. 19. The School Boards of two or more districts may combine together for the purpose of providing, maintaining, and keeping efficient schools common to such districts. Sect. 52.

If the School Board think it expedient they may appoint a body of managers, consisting of not less than three persons, and may delegate to them the control and management of any school provided by the Board or any other of their powers, except those relating to the raising of money. Sect. 15. A joint body of managers may be appointed for combined districts. Sect. 52.

Attendance at School.] It is the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic. 39 & 40 Vict. c. 79, s. 4.

In any case in which the parent of a child between the ages of five and fourteen years, who is prohibited from being taken into full time employment (see *post*, p. 419), habitually and without reasonable excuse neglects to provide efficient elementary education for the child, and in any case in which a child within the limits of the age referred to is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals, it is the duty of the local authority (*vide infra*), after due warning to the parent, to complain to a Court of summary jurisdiction. The Court is empowered to make an attendance order requiring that the child shall attend such certified efficient school as the parent may select, and in the event of the parent not making a selection, such public elementary school as the Court may think expedient. Sect. 11. A "reasonable excuse" for the purpose of that section is either that there is no public elementary school within two miles of the child's residence, or that the absence of the child from school has been caused by sickness or any unavoidable cause. *Id.*; *In re Murphy*, L. R. 2 Q. B. D. 397; 46 L. J. M. C. 193. A conviction for non-compliance with an attendance order may be proved by the minute books of the Court containing an entry of the order. *London School Board v. Harvey*, L. R. 4 Q. B. D. 451; 48 L. J. M. C. 130.

The attendance of children at school is secured by direct or indirect compulsion. The direct compulsion is carried out by bye-laws and school attendance orders. The indirect compulsion is secured by imposing restrictions on the employment of children, except when they have attained a certain standard of proficiency in reading, writing, and arithmetic, or have obtained a certificate of previous due attendance at school, and also by making the attendance at school of the children of paupers a condition of relief being given out of the workhouse.

Local Authorities.] The local authorities for the purpose of carrying out compulsory education are the School Boards in districts for which School Boards have been elected, and in other districts school attendance committees.

School Attendance Committee.] In a borough not under the jurisdiction of a School Board the school attendance committee are elected by the council of the borough, and in a parish not included in a School Board district or a borough the committee are elected by the guardians of the union in which the parish is comprised.

The committees are appointed annually, and consist of not less than six nor more than twelve members of the Council or Board of Guardians by which the committee are appointed. Where a committee is appointed by guardians, one-third, at least, of the members are, when the circumstances admit of it, to be *ex-officio* guardians. 39 & 40 Vict. c. 79, s. 6. A school attendance committee appointed by guardians is to act for every parish in the union, which is not for the time being under any other "local authority" within the meaning of the Act. Sect. 32. As to school attendance committees in urban sanitary districts, which are not and do not comprise boroughs, see sect. 33. School attendance committees may appoint local committees for different parishes or other areas in their district. A local committee may consist of not less than three persons, either wholly members of the council, guardians or authority by whom the committee are appointed, or partly of such members and partly of other persons. Sect. 32.

Bye-Laws.] It is the duty of the local authorities (including the school attendance committee for a union comprising a parish) to make bye-laws requiring the parents of children of such age, not less than five years, nor more than thirteen years (unless there is some reasonable excuse), to cause such children to attend school. No child is obliged to attend school whom one of Her Majesty's inspectors certifies has reached a standard of education specified in the bye-law.

The following reasons are deemed a "reasonable excuse" for the non-attendance of a child at school: (1) that the child is under efficient instruction in some other manner; (2) that the child has been prevented from attending school by sickness or any unavoidable cause; (3) that there is no public elementary school open which the child can attend within three miles from the residence of the child, measured according to the nearest road. 43 & 44 Vict. c. 23, s. 2; 39 & 40 Vict. c. 79, s. 21; 33 & 34 Vict. c. 75, s. 74.

Employment of Children.] No person is to take into his employment a child under ten, or any child between the ages of ten and fourteen, who has not obtained a certificate of proficiency, or of due attendance at a public elementary school, unless the child is employed and attending school in accordance with the Factory Acts or of a bye-law. 39 & 40 Vict. c. 79, s. 5; 43 & 44 Vict. c. 32, s. 4. A person is not deemed to have taken a child into his employment

within the meaning of the Act, if it be proved (1) that there is no available school within two miles of child's residence, (2) that the employment does not interfere with the efficient elementary instruction of the child, (3) or is exempted by a notice of the local authority. This exemption applies to the employment above the age of eight for the ingathering of crops, &c., for a period not exceeding six weeks. Copies of such notices are to be sent to the overseers of each parish within the jurisdiction of the local authority, and the overseers are to cause copies to be affixed on church and chapel doors. Sect. 9.

The Elementary Education Acts do not control the provisions of the Factory Acts regulating the education of children employed in accordance with those Acts. *Mellor v. Denham*, L. R. 4 Q. B. D. 241; 48 L. J. M. C. 113; 43 & 44 Vict. c. 23, s. 4.

School Fees.] The School Board may, in the case of a child whose parent is unable from poverty to pay the school fees from time to time, for a renewable period not exceeding six months, remit the whole or any part of the fee payable for attendance at a board school. But such remission of school fees is not to be deemed parochial relief to the parent of the child. 33 & 34 Vict. c. 75, s. 17. When a parent, not being a pauper, by reason of poverty is unable to pay the ordinary fee for his child at a public elementary school, he is to apply to the guardians of his parish, and they, if satisfied of his inability, are to pay the fee, not exceeding 3*d.* a week, or such part as the parent in the opinion of the guardians is unable to pay. Such payment by the guardians is not to deprive the parent of any rights or subject him to any disability. 39 & 40 Vict. c. 79, s. 10.

Pauper Children.] Where relief out of the workhouse is given by the guardians or their order, by way of weekly or other continuing allowance to the parent of a child between the ages of five and fourteen years, or to any such child, it is a condition for the continuance of relief that elementary education shall be provided for the child. The guardians are to give such further relief (if any) as may be necessary to enable a child to attend school; but it is not to be a condition of relief that the child shall attend a school other than that which is selected by the parent. The guardians are not, however, to give any relief to a parent in order to enable him to pay more than the ordinary fee payable at the school which he selects, and in no case is the fee to exceed 3*d.* per week. Sect. 40; 43 & 44 Vict. c. 23, s. 5.

Parliamentary Grant.] Public elementary schools are the only schools for which a grant for the maintenance of the school can be allowed, and to obtain such grant the conditions prescribed by the minutes of the Education Department in force for the time being must be fulfilled. 33 & 34 Vict. c. 75, s. 96. As to the conditions of a grant, see sects. 96, 97; 39 & 40 Vict. c. 79, ss. 18—20.

The local authorities have not power, when the school fund proves insufficient, to contract a temporary loan for the purpose of meeting their current expenses until they can obtain money out of the rates. *R. v. Reed*, L. R. 5 Q. B. D. (C. A.) 483; 49 L. J. (C. A.) 600.

Gifts to Local Authorities.] All gifts and assurances of land of any tenure, and whether made by deed or by will, for the purposes only of a school house for an elementary school, and all bequests of personal estate to be applied towards the purchase of land for such purposes only, are to be valid, notwithstanding the Statutes of Mortmain. 34 Vict. c. 13.

Transfer of Schools to.] See 33 & 34 Vict. c. 75, s. 23. *Ex parte Bates*, L. R. 17 Eq. 241; 43 L. J. Ch. 340; *Att.-Gen. v. English*, L. R. 18 Eq. 608; 44 L. J. Ch. 229; *re Poplar School*, L. R. 8 Ch. D. 543; *London School Board v. Faulconer*, L. R. 8 Ch. D. 571; 48 L. J. Ch. 41.

Industrial Schools.] As to the powers of a local authority with regard to establishing, or maintaining, or contributing to an industrial school, see 33 & 34 Vict. c. 75, ss. 27, 28, 36; 36 & 37 Vict. c. 86, s. 14; 39 & 40 Vict. c. 79, ss. 13—16; 42 & 43 Vict. c. 48; 43 & 44 Vict. c. 15. "Day industrial schools" are now established in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided for the children. 39 & 40 Vict. c. 79, s. 16.

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